

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

JANUARY TERM, 1902.

No. 1172

134

ELON A. WOODWARD, JAMES WHITE, TIMOTHY D. DALY,
PETER M. BECKER, WILLIAM WARD, THOMAS LANE
GAN, JOHN T. MURPHY, JOHN O'CONNOR, AND THOMAS
M. O'CONNOR, APPELLANTS,

vs.

JEREMIAH F. NELLIGAN, JOHN J. NELLIGAN, AND DAVID
A. NELLIGAN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 22, 1902.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1902.

No. 1172.

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In the Court of Appeals of the District of Columbia.

ELON A. WOODWARD ET AL., Appellants, }
vs. } No. 1172.
JEREMIAH F. NELLIGAN ET AL.

a Supreme Court of the District of Columbia.

JEREMIAH F. NELLIGAN, JOHN J. NELLIGAN,
and David A. Nelligan }
vs. }
ELON A. WOODWARD, JAMES WHITE, TIMOTHY } No. 20332. Equity.
D. Daly, Dennis Fogarty, Peter M. Becker, }
William Ward, Thomas Lanegan, John T. }
Murphy, John O'Connor, and Thomas M. }
O'Connor.

UNITED STATES OF AMERICA, } ss :
District of Columbia, }

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit :

1 *Original Bill for Injunction.*

Filed April 11, 1899.

In the Supreme Court of the District of Columbia.

JEREMIAH F. NELLIGAN, JOHN J. NELLIGAN,
and David A. Nelligan }
vs. }
ELON A. WOODWARD, JAMES WHITE, TIMOTHY } No. 20332. Equity.
D. Daly, Dennis Fogarty, Peter M. Becker, } Docket No. 46.
William Ward, Thomas Lanegan, John T. }
Murphy, John O'Connor, and Thomas M. }
O'Connor.

To the honorable the justice of said court:

The bill of complaint of the above-named complainants respectfully shows :

1. That they are all citizens of the United States and resident in Atlantic City, State of New Jersey, and bring this suit in their own right.

2. The defendants are all residents of said District and are sued, the defendants Woodward and White as trustees under the deed of trust hereinafter mentioned, the defendant Daly as treasurer, the defendant Fogarty as president, the defendant Becker as secretary, and the remaining defendants as directors and shareholders of a voluntary unincorporated association known and styled as "The Second Workingmen's Building Association of the District of Columbia," and as representing the other members, all of whose names are unknown to complainants, and are too numerous to be made parties hereto.

3. The said association for many years has carried on what is known as a building association, its object, as set forth in its prospectus, being to aid its members in procuring homesteads by providing funds for use in the purchase of real estate, for making improvements thereon, and for securely investing their savings.

4. Complainants further show that one David Nelligan, their father, on or about the seventeenth day of May, 1886, was a stockholder in said unincorporated association, and on said day received an advance or loan amounting to the sum of five hundred and twenty-five (\$525) dollars on certain shares of stock held therein by him, and for the purpose of securing the repayment of said advances, as also the prompt and due performance by him of his obligations as a member of said unincorporated association, on the said day and year executed his certain writing obligatory under seal, acknowledging himself bound unto the defendant Timothy D. Daly, treasurer, as aforesaid, in the penalty of two thousand dollars, conditioned for the payment by him of certain monthly dues and the repayment of said loan, and for the purpose of securing the due performance of the conditions of the said writing obligatory on the said seventeenth day of May, 1886, executed a certain deed of trust, bearing said date, whereby he and his wife, Mary Nelligan, conveyed unto the said defendant, White, all those certain parcels of land and premises situate and being in the county of Washington, in the District of Columbia, and known and distinguished as lots numbered one (1) and two (2) of Johnson's subdivision of certain lots in Wright's and Dole's subdivisions of parts of "Pleasant Plains;" all of which will more fully appear on reference to the said deed of trust, duly recorded among the land records of the District of Columbia, the seventeenth day of May, 1886, in Liber 1186, folio 8 *et seq.*, and said bond or writing obligatory, copies of which are herewith filed, marked Exhibit J. F. N. Nos. 1 and 2 respectively, and which it is prayed may be read as part hereof at the final or other hearing of this cause.

5. Your complainants further aver and say that the said David Nelligan subsequently obtained further and additional advances from the said building association, so that on the nineteenth day of April, 1890, he was indebted to the said association in the sum of eight hundred and forty-nine and seventy-seven-hundredths (\$849.77) dollars after deducting the amount paid by him on account of the dues to said

association, as also interest to which he was entitled as a shareholder therein.

6. Your complainants further aver and say that for some time prior to the seventeenth day of May, 1886, and from that day until on or about the first day of November, 1898, one John T. Lynch was the secretary of the said Second Workingmen's Building Association, and as such secretary had charge, with the keeping, of all accounts with the stockholders thereof, and all books, papers, stockholders' bonds, and deeds belonging to the said association, and was permitted by the officers of the said association and the directors thereof to receive payments from the various stockholders of the said association on account of loans made to them or on account of their dues and monthly payments, and to receipt therefor; that the said Lynch had practically the sole management of the affairs of said association, and all the transactions had by the said Nelligan in the matter of receiving the said loans and advances and
4 the payments made by him to the said association of dues on account thereof were made and had with the said John T. Lynch, who duly receipted therefor to him.

7. On or about the nineteenth day of April, 1890, the said Nelligan disposed of certain other real estate and received the proceeds derived therefrom, and thereupon the said Nelligan paid to the said John T. Lynch as secretary, and in settlement of his indebtedness to said association as aforesaid, the said sum of eight hundred and forty-nine and seventy-seven-hundredths (\$849.77) dollars, and the said Lynch, as evidence of the receipt thereof by him from the said Nelligan, delivered to said Nelligan the original deed of trust executed by the said Nelligan as hereinbefore set forth, the bond executed by the said Nelligan and secured by the said deed of trust, and also the original abstract prepared by the attorney for said association at the time the advances aforesaid were made to the said Nelligan; that the said Nelligan was ignorant of and unacquainted with the system of conveyancing in force in said District, and was not informed or advised that it was necessary to have the said deed of trust released of record, being left under the impression by the said Lynch that all that was necessary, as evidence of the payment of his indebtedness to said association, was the delivery to him of the original deed of trust and the bond secured thereby, and the said deed and bond remained in the possession of said Nelligan until the time of his death, and since then in the possession of his widow, mother of complainants, who has had charge of his papers.

8. Your complainants aver and say that the said David
5 Nelligan departed this life in this District, intestate, on the twenty-fourth day of December, 1892, leaving him surviving your complainants, his children and only heirs-at-law.

9. Your complainants further aver and say that the officers and directors of the said association had immediate notice and knowledge of the fact that the said John T. Lynch had received the amount due from the said Nelligan to the said association, as aforesaid, and that from the time of the payment thereof, as aforesaid, to

wit, the nineteenth day of April, 1890, until the time of the death of the said Nelligan, to wit, the said twenty-fourth day of December, 1892, the said Nelligan made no further payment into the said association, nor was he notified, requested, or required in any manner to make such payments, and after his death no payments on account of such indebtedness were made by these complainants, nor any one on their behalf, nor were they notified or requested by any of — officers of said association to make such payment, and altho', as complainants are informed and believe and so aver, the constitution of said association provides, among others, that if the monthly payments due from a stockholder taking an advance from the funds of the association shall be unpaid for four months the board of directors may order the trustees to compel payment by proceedings upon the bond and deed of trust, according to law, neither the said association or its officers since the said nineteenth day of April, 1890, up to a comparative-recent date, as hereinafter set forth, have taken or threatened to take any steps to enforce said deed of trust, but have treated said indebtedness and lead the said Nelligan and

your complainants to believe the same as liquidated and paid.

6 10. Complainants further say that, although the payments, as aforesaid, were made by said Nelligan to the said John T. Lynch under the circumstances herein set forth, the said association now claim that the said Lynch did not pay to the said association the money so by him received from the said Nelligan, and the officers of the said association, having ascertained that the said deed of trust stands unreleased of record, now insist that the same is a valid lien upon the real estate thereby conveyed to secure the amount due upon the said loan aforesaid, with interest from the date thereof to the present time, and have rendered to the attorney of these complainants a statement by which it appears that the amount claimed by the said association to be secured by the said deed of trust to the first day of February, 1899, aggregates the sum of one thousand two hundred and eighty-four and twenty-one-hundredths (\$1,284.21) dollars, and threaten, *that* unless the same is paid within a short time, to enforce the said deed of trust by a sale of the real estate thereby conveyed for the purpose of paying the said alleged debt.

11. Your complainants aver and say that the indebtedness secured by the said deed of trust, as aforesaid, was liquidated and canceled by the said David Nelligan on the nineteenth day of April, 1890, and that the said association by its action and the conduct of its officers is estopped from asserting any claim under the said deed of trust or as against the said real estate, even if it be true that the said Lynch did not account to the said association for the money so paid him by the said Nelligan.

12. That your complainants desire said real estate released of record from the lien of said deed of trust, inasmuch as the fact
7 of its standing unreleased operates as a cloud upon the title thereto; in addition, the indebtedness secured thereby having been paid, the said trust should be released.

Wherefore your complainants pray :

1. That the defendants be required to answer the premises, but not under oath, an answer under oath being specifically waived; that process issue out of this honorable court, directed to each of them, commanding them to appear herein by a day named.

2. That the defendants Woodward and White and the officers and directors of said association, defendants hereto, be enjoined and restrained from taking any action under the said deed of trust looking to a sale of the said real estate under the provisions thereof.

3. That the defendants Woodward and White be required to execute to these complainants a deed of release of the said real estate from the said deed of trust.

4. That your complainants may have such other and further relief as the nature of the case may require.

JEREMIAH F. NELLIGAN.
JOHN J. NELLIGAN.
DAVID A. NELLIGAN.

The defendants to this bill are—

Elon A. Woodward,
James White,
Timothy D. Daly,
Dennis Fogarty,
Peter M. Becker,
William Ward,
Thomas Lanegan,
John T. Murphy,
John O'Connor, and
Thomas M. O'Connor.

LEON TOBRINER,
Sol'r for Complainants.

8 We, Jeremiah F. Nelligan, John J. Nelligan, and David A. Nelligan, on our oaths do depose and say that we have heard read the foregoing bill of complaint by us subscribed and know the contents thereof; that the statements therein made by us from personal knowledge are true, and that those stated upon information and belief we believe to be true.

JEREMIAH F. NELLIGAN.
JOHN J. NELLIGAN.
DAVID A. NELLIGAN.

Subscribed and sworn to before me this seventh day of April,
A. D. 1899.

[SEAL.]

HENRY G. NORMAN,
Notary Public.

Filed April 11, 1899.

This indenture, made this seventeenth day of May, in the year of our Lord one thousand eight hundred and eighty-six between David Nelligan and Mary Nelligan his wife of the city of Washington, in the District of Columbia, of the first part and Elon A. Woodward and James White, trustees of the Second Workingmen's Building Association of the District of Columbia, parties of the second part.

Whereas the said David Nelligan by virtue of the provisions of the constitution of said association, hath received therefrom advances on certain shares of stock held therein by him amounting to the sum of five hundred and twenty-five dollars, and hath executed and delivered to the treasurer of said association a certain sealed obligation, bearing even date herewith, in the penal sum of two thousand (\$2,000) dollars, conditioned to be void by the payment to said treasurer, or his successor in office monthly, and on the second Wednesday of each and every month succeeding the date of said advances, until said association shall close, or the return of the money advanced to h— by payment in strict accordance with the provisions of the said constitution and of said sealed obligation, the sum of two dollars on each share of stock so advanced on or upon which future advances may be made within five years from the date of these presents to the extent of said sum of two thousand dollars, and also all fines, forfeitures, taxes and expenses chargeable against him under said constitution, and said sealed obligation. And to secure a faithful compliance with all the conditions of said sealed obligation, the said parties of the first part have agreed to execute these presents.

10 Now therefore this indenture witnesseth that the said parties of the first part, for and in consideration of the premises and of the sum of five dollars, current money of the United States to them in hand paid by the said parties of the second part, the receipt of which before the ensealing and delivery of these presents is hereby acknowledged, have granted, bargained and sold, aliened enfeoffed, conveyed and confirmed and by these presents do grant, bargain and sell, alien, enfeoff, convey and confirm unto and to the use of the said parties of the second part, their heirs and assigns, and the survivor of them his heirs and assigns, all those certain pieces or parcels of land, premises situate and being in the said county of Washington in the District of Columbia, and known and distinguished as lots numbered one (1) and two (2) of Johnson's subdivision of certain lots in Wright and Dale's subdivision of part of Pleasant Plains, being the same property that was conveyed to David Nelligan by deed recorded in Liber No. 788 fol. 121 of the land records of said District, together with all the right, easements, privileges and appurtenances to the same belonging or in anywise thereto appertaining.

To have and to hold the said land and premises with the appurtenances and hereditaments to the same belonging unto and to the only use and benefit of said parties of the second part, their heirs and assigns and to the survivor of them and to the heirs and assigns of such survivor.

In and upon the trusts nevertheless hereinafter mentioned and declared, that is in trust to permit the said David Nelligan his heirs and assigns, to use and occupy the said real estate and premises hereinbefore granted and the rents, issues and profits

thereof to receive and enjoy until some default or failure shall
11 have been made in the performance of the condition of said sealed obligation mentioned; and in the event of any default or failure, in whole or in part, being made in the payment of any one or more of the said monthly dues, or of the fines, forfeitures, expenses, taxes, or insurance in said sealed obligation specified, when and as the same shall become due and payable then said sealed obligation, at the expiration of four months from the date of the first default, shall be deemed and taken as forfeited; and thereupon at the written request of the treasurer of said association for the time being, the said parties of the second part and the survivor of them, or the trustee acting in the execution of this trust, after giving notice by advertisement twice a week for at least two weeks in some newspaper published in said District of Columbia, shall proceed to sell and dispose of the aforesaid described real estate and premises, or so much thereof as may be necessary, at public auction, upon such terms and conditions, and at such time and place, as to them or him shall appear most advantageous to the parties interested; and upon compliance with the terms of sale, to convey the same in fee-simple to the purchaser or purchasers thereof, free from all liability for the non-application or misapplication of the purchase-money; and out of the proceeds of such sale or sales the said trustees or trustee shall pay:

First. The proper expenses attending such sale or sales, including a commission of two and one-half per cent. on the gross amount thereof, and all moneys advanced, or paid for insurance or taxes upon the real estate hereinbefore conveyed, with interest calculated to the time of sale.

12 Secondly. They or he shall pay to the treasurer of said association for the time being whatever sum or sums of money may be found due said association at the time of sale, and intended to be secured by said sealed obligation, upon an account stated in accordance with the provisions of the constitution of said association and the obligations thereto annexed. And lastly, the surplus if any, shall be paid over to the said David Nelligan his executors, administrators or assigns. And the said David Nelligan doth hereby covenant and agree at his own cost, during the continuance of this trust to keep paid up all taxes and assessments, general and special, levied or assessed upon said real estate and premises, and to keep said premises insured against fire, in the name and to the satisfaction of said trustees, who shall apply whatever may be received therefrom

to the payment of the matter hereby secured, and in default of the payment of said taxes and assessments, or in effecting said insurance as aforesaid, it shall be lawful for the secretary of said association, to effect said insurance and to pay said taxes, and the expense thereof, with interest, shall be a charge secured hereby.

In testimony whereof the said parties of the first part have hereunto set their hands and affixed their seals on the day and year first above written.

DAVID NELLIGAN [SEAL.]

her
MARY X NELLIGAN.
mark.

Signed, sealed and delivered in the presence of—
CHARLES WALTER.

13 DISTRICT OF COLUMBIA, ss:

I, Charles Walter, a notary public in and for the District of Columbia, do hereby certify that David Nelligan and Mary Nelligan, his wife, parties grantors to a certain deed bearing date on the seventeenth day of May, A. D. 1886, and hereto annexed, personally appeared before me in said District aforesaid, and the said David Nelligan and Mary Nelligan being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Mary Nelligan, wife of said Nelligan, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, she, the said *David* Nelligan, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract from it.

Given under my hand and notarial seal this 17th day of May, A. D. 1886.

CHARLES WALTER,
Notary Public, D. C.

14 EXHIBIT J. F. N. No. 2.

Filed April 11, 1899.

The Second Workingmen's Building Association of the District of Columbia.

Know all men by these presents, that I, David Nelligan of the city of Washington, in the District of Columbia, am held and firmly bound unto Timothy D. Daly, treasurer of a certain association, denominated the Second Workingmen's Building Association, of the District of Columbia, in the just and full sum of two thousand dollars, current money of the United States, to be paid unto Timothy D. Daly, treasurer as aforesaid, or to his successor in office, for which payment well and truly to be made I bind myself my heirs, executors or administrators firmly by these presents.

Sealed with my seal and dated this seventeenth day of May in the year of our Lord one thousand eight hundred and eighty-six.

Whereas the said David Nelligan a stockholder in said association, has by virtue of, and in accordance with, the provisions of the constitution and obligations attached thereto, of said association, received from the said association an advance on three shares of stock amounting to the sum of five hundred and twenty-five dollars.

And whereas the said David Nelligan if the board of directors of the said association shall consent thereto, may hereafter within five years next after the date of these presents obtain and receive from said association other and further advances to the extent of
15 said sum of two thousand dollars on other stock of said association now held or hereafter purchased by said David Nelligan.

Now the condition of the above obligation is such that if the said David Nelligan or his heirs, executors and administrators shall well and truly pay, or cause to be paid unto Timothy D. Daly treasurer as aforesaid, or to his successor in office, the sum of two dollars on each share of stock held by him, on which money has been advanced to him or may within five years next after the date of these presents be hereafter advanced to him monthly and every month, commencing from the date of said advance, and continue to pay the same on the second Wednesday of each and every month thereafter, until the close of the said building association or the return of the money advanced to him by payment in accordance with the provisions of the said constitution, but not by payment of his monthly dues except so far as he may be entitled to a credit of one dollar per month, with interest, in accordance with the provisions of said constitution and also all fines, forfeitures, expenses, taxes and insurance which may be imposed, incurred or expended by virtue of the provisions of the said constitution, or in protecting any securities given for this bond, then this obligation to be void, or else remain in full force and virtue in law.

DAVID NELLIGAN. [SEAL.]
———. [SEAL.]

Signed, sealed and delivered in the presence of—
NEAL T. MURRAY.

Filed March 20, 1900.

In the Supreme Court of the District of Columbia.

JEREMIAH F. NELLIGAN ET AL.,
vs.
 ELON A. WOODWARD ET AL. } Equity. No. 20332.

The answer of the defendant Timothy D. Daly to the bill of complaint.

This defendant for answer says:

1. He admits the allegations in the first paragraph of the bill.
2. He admits that the defendants are citizens of the District of Columbia; that the defendants Woodward and White are trustees under the deed of trust referred to in the fourth paragraph of the bill; that this defendant is the treasurer, the defendant Becker the secretary, and the other defendants shareholders of "The Workingmen's Building Association" of the District of Columbia, which is an unincorporated association.
3. He admits the allegations in the third paragraph of the bill.
4. He admits that David Nelligan, who he has no reason to doubt was the father of the plaintiffs, was on the 17th day of May, 1886, a stockholder in said association, and on that day received an advance of \$525.00, and executed the bond and deed of trust referred to in the fourth paragraph of the bill, which bond and deed of trust were taken charge of by John T. Lynch, the then secretary of said association, as provided by the seventh article of the constitution of said association, which in terms provided for the custody of all stockholders' bonds and deeds, and so far as this defendant has knowledge said bond, after delivery, and said deed of trust, after delivery and recordation, were never in the hands of any other officer of said association except the said John T. Lynch, its secretary.
5. He admits that David Nelligan subsequently obtained further and additional advances from said association, and says that on the 19th day of April, 1890, said Nelligan was indebted unto said association in the sum of eight hundred and forty-nine and $\frac{77}{100}$ dollars, as appears from the books of said association.
6. He admits that John T. Lynch was, prior to the 17th day of May, 1886; and until the 12th day of October, 1898, the secretary of said association; that as such secretary his duties were prescribed by its constitution, and were, amongst others, to keep accounts with stockholders, attest orders drawn on the treasurer for payment of money when ordered by the board of directors, and have in charge all books and papers, stockholders' bonds, and deeds belonging to the association, as will appear by reference to said constitution, a copy of which, filed herewith and marked T. D. D. No. 1, is prayed to be read as a part of this answer at the hearing of the cause. He denies that the said John T. Lynch, as secretary or otherwise, was permitted by the officers and directors of said association to re-

ceive payments from the stockholders on account of loans made to them or on account of dues and monthly payments, and to receipt therefor. He also denies that said Lynch had practically the sole management of the affairs of said association, and that

18 all the transactions had by the said David Nelligan in receiving the said loans and advances and the payments made by him to said association of dues on account thereof were made and had with the said John T. Lynch, who receipted therefor to him; on the contrary, he says that the management of said association was in the hands of its officers, who discharged their respective duties as prescribed by the constitution, and that said David Nelligan received the loans and advances made to him from this defendant as treasurer of said association, and that all payments made by said Nelligan to said association were made to this defendant, as treasurer, and were duly entered upon his books of receipts. Further answering, he says that by the constitution of said association, to which reference is now made, it was the duty of the treasurer to receive all moneys paid into the association and pay all orders drawn upon him by order of the board of directors, and that said named duties were never delegated to any other officer or member of the association.

17. He knows nothing of his personal knowledge as to the allegations contained in the 7th paragraph of the bill, as to the payments by said David Nelligan of the sum of \$849.77 to John T. Lynch, as secretary of said association, in payment of the indebtedness of said Nelligan to the association, or as to the delivery to said Nelligan by said Lynch of the bond and deed of trust securing the advance made to said Nelligan as hereinbefore referred to, nor does he know anything in regard to the other matters in said paragraph set forth. Further answering, he says that if it be true, as alleged in said paragraph, that the said David Nelligan paid said named sum of money to said John T. Lynch, said

19 payment was made to said Lynch as agent of said Nelligan and not as agent of said association; and if it be true, as alleged in said paragraph, that said John T. Lynch received said sum of money from said Nelligan, he received the same as agent of said Nelligan and not as agent of said association, and that said Lynch was without authority from said association to receive the same on its account, and that no part thereof was ever paid to the said association by said Lynch on account of the indebtedness of said Nelligan; and if it be true, as alleged, that said Lynch delivered the deed of trust and bond and title papers connected with the loan made by said Nelligan from said association to said Nelligan, he did so without the authority of the association, in disregard of his duties as its secretary and in fraud of the rights of the association.

8. He knows nothing as to the allegation in the eighth paragraph of the bill, and, whilst he has no reason to doubt the truth thereof, calls for proof, if hereafter it be deemed necessary.

9. He denies that the officers and directors of said association had immediate notice and knowledge of the fact that said Lynch had re-

ceived the amount due by said Nelligan to the association; on the contrary, he says that neither he as treasurer nor any officer of said association, so far as he knows, had knowledge of any payments by said Nelligan, to be applied on account of his indebtedness, until after the said Lynch ceased to be secretary of said association. He admits that it is true that no payment was made to the association by said Nelligan subsequently to the 19th April, 1890, but he says that the failure of said Nelligan to make payments was frequently before the association, and the said John T. Lynch, as secretary, called on
20 to make a return as to the account of said Nelligan, it being one of the duties of the secretary, as prescribed by the constitution, to make returns of all delinquents to the board of directors; that at that time the said John T. Lynch was a trusted officer of the association, and when the matter of the indebtedness of said Nelligan was called to the attention of the board of directors he always informed said directors that the amount due by said Nelligan, who was the uncle of the said Lynch, was amply secured and would be duly settled. Relying on these representations, and having no official settlement of the account of said Nelligan submitted by its secretary, the board of directors permitted the matter to drift along and received no information as to the claim of payment until after the removal of said Lynch from the office of secretary. Further answering, he says that no notice of the alleged payment was ever brought to the attention of the association until after the said Lynch ceased to be secretary, and that the association, except by the failure to direct a sale under the deed of trust, never did any act or thing tending to lead the said Nelligan or the plaintiffs to believe that said indebtedness had been liquidated and paid.

10. Answering the tenth paragraph of the bill, he says that the deed of trust referred to in the fourth paragraph of the bill is still unreleased and the indebtedness secured thereby unpaid, and that he is advised, and on such advice charges, that the indebtedness secured by the said deed of trust is still a subsisting lien against the real estate mentioned in the bill, and that the payment of the same can be enforced by sale under the provisions of said
21 trust deed; and, further, that shortly after the said Lynch ceased to be the secretary of said association steps were taken to enforce the collection of the amount due by said Nelligan, but that since the filing of this cause no steps have been taken to enforce payments by sale under said trust.

11. On advice he denies that said indebtedness has been liquidated and cancelled, even though it be true as alleged that payment was made by said Nelligan to said John T. Lynch, which payment he in no way admits, and further he denies that said association is estopped from asserting its claim under said deed of trust and against said real estate.

12. Further answering, he says that said John T. Lynch was on the 17th May, 1886, when the loan was made to said David Nelligan, the secretary and a trusted officer of said association, and continued as such until after the annual meeting in April, 1898; that shortly after said annual meeting investigations were made as to the

CONSTITUTION.

ARTICLE I.—*Title.*

This Association shall be known as the SECOND WORKINGMEN'S BUILDING ASSOCIATION of the District of Columbia.

ARTICLE II.—*Object.*

The object of this Association shall be to aid its members in procuring homesteads, by providing funds for use in the purchase of real estate, for making improvements thereon, and for securely investing their savings; and the members thereof shall share in all profits and be responsible for all losses in proportion to their interest, as provided by this Constitution.

ARTICLE III.—*Meetings.*

SECTION 1. The monthly meetings of the Association from the month of October to March inclusive, shall be held at seven o'clock p. m., and from April to September inclusive, at eight o'clock p. m. on the second Wednesday of each month.

SEC. 2. The annual meeting of the stockholders shall be held on the Second Wednesday in April in each and every year, and fifteen members shall constitute a quorum. Special meetings may be called by the President as provided in Section 2, Article VI.

ARTICLE IV.—*Officers.*

The officers of this Association shall be a President, Vice-President, Secretary, Treas-

urer, and seven Directors, all of whom must be Stockholders, and shall be elected annually, after the first year, on the second Wednesday in April, to serve for one year, or until their successors are elected:

ARTICLE V.—*Stockholders.*

SECTION 1. The Stockholders of this Association shall be not less than twenty-one years of age. Minors may hold stock through trustees, but shall not be entitled to an advance during their minority.

SEC. 2. The Stockholders of this Association, before being entitled to any of the privileges or benefits thereof, shall sign this Constitution with the understanding, acknowledgement and agreement that they thereby obligate and bind themselves to perform faithfully and fully every duty to this Association which may be imposed by this Constitution, and shall also receipt for their certificate of stock.

ARTICLE VI.—*President & Vice-President.*

SECTION 1. It shall be the duty of the President to preside at all meetings of this Association, and of the Board of Directors; to sign all orders on the Treasurer for the payment of money when ordered by the Board of Directors, and perform all other duties pertaining to the office of President. He shall have the casting vote in case of a tie.

SEC. 2. If fifteen stockholders request him in writing to call a special meeting, he shall order the same.

SEC. 3. The Vice-President shall perform the duties of the President during his absence or inability.

ARTICLE VII.—*Secretary.*

It shall be the duty of the Secretary to keep accurate minutes of the proceedings of the Association and of the Board of Directors. He shall keep an account with each stockholder; attest all orders drawn on the Treasurer for the payment of money, when ordered by the Board of Directors. He shall have in charge all books and papers, stockholders' bonds and deeds belonging to the Association not otherwise provided for.

He shall see that all policies of insurance are renewed, and upon default of a stockholder to renew the insurance, the Secretary shall draw from the Treasurer the amount necessary to renew said insurance, and charge the same to the stockholder, to be paid with the dues at the next monthly meeting.

He shall make return of all delinquents to the Board of Directors, and, at the annual meetings, furnish a detailed statement of the finances. He shall give bond to the Trustees for the faithful performance of his duty in the sum of two thousand dollars; said bond to be deposited with the President; and at the expiration of his term of service he shall deliver over to his successor in office all books and papers of the Association that may be in his possession. In case of inability to attend any meeting he shall provide, with the approval of the President, an efficient substitute. He shall receive for his services such compensation as the Board of Directors may determine.

ARTICLE VIII.—*Treasurer.*

It shall be the duty of the Treasurer to receive all moneys paid into the Association, and to pay all orders drawn upon him by order of the Board of Directors, if signed by the Presi-

urer, and seven Directors, all of whom must be Stockholders, and shall be elected annually, after the first year, on the second Wednesday in April, to serve for one year, or until their successors are elected:

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It shall be the duty of the Treasurer to receive all moneys paid into the Association, and to pay all orders drawn upon him by order of the Board of Directors, if signed by the Presi-

dent and attested by the Secretary. He shall keep a book in which shall be kept an account of the receipts and disbursements, and make out and certify to the Board of Directors a monthly exhibit of all moneys received and paid out by him. He shall give bond to the Trustees for the faithful performance of his duty in the sum of five thousand dollars, or such greater sum as the Board of Directors may from time to time direct; said bond to be deposited with the President; and at the expiration of his term of service he shall deliver over to his successor in office all moneys, books, and papers of the Association that may be in his possession. He shall receive for his services such compensation as the Board of Directors may determine.

ARTICLE IX.—*Board of Directors.*

SECTION 1. The Directors, together with the President, Vice-President, Secretary, and Treasurer shall form a Board of Directors, a majority of whom shall constitute a quorum. It shall be their duty to dispose of the funds and see to their safe investment, and attend to the financial concerns of the Association. They shall meet on the second Wednesday of each month for the consideration of such business as the Board may determine, and hold such other meetings as they may deem proper.

SEC. 2. The record of their proceedings shall be open for the inspection of stockholders.

SEC. 3. Any Director who shall be four months in arrears for dues, fines, etc., or who shall absent himself from three consecutive meetings shall cease to be a member of the Board of Directors, and the vacancy so made shall be filled as provided in Section 5 of this Article.

SEC. 4. The Board shall elect an Attorney and two Trustees; a Valuation Committee, composed of three persons, who shall be stockholders and members of the Board of Directors; also a Finance Committee of three members, who shall examine and report in writing semi-annually, the state of the Secretary's and Treasurer's accounts.

*SEC. 6. Any vacancy which may occur in the Board of Directors shall be filled by them at their next monthly meeting.

ARTICLE X.—*Trustees.*

The Trustees shall consist of two persons who are not stockholders in whose name shall be given all deeds of trust for the use of the Association, and to whom shall be assigned all policies of insurance on property deeded as security for advances. The Trustees shall execute deeds of release upon any property given to the Association as security: *Provided*, the Secretary and Treasurer shall have first signed such deed of release.

The Trustees shall be entitled to one dollar each for signing a deed of release.

ARTICLE XI.—*Valuation Committee.*

It shall be the duty of the Valuation Committee to examine and value all property of-

*See page 14.

ferred to the Association as security. They shall report in writing the location, size and value of such property, and the insurance upon the same. The expense of making the assessment (one dollar to each assessor present at the assessment and signing of the report) shall be paid by the Association.

ARTICLE XII.—*Attorney.*

SECTION 1. It shall be the duty of the Attorney to make the necessary examination of titles to all property offered to the Association as security for advances. He shall present to the Board of Directors a full abstract of each title together with his opinion as to the validity of the same. He shall prepare all bonds and deeds of trust given to the Association for security. He shall, when requested, meet with the Board of Directors, but shall not be entitled to a vote in their deliberations. His charges (which shall be fixed by the Board of Directors,) shall be borne by the stockholder dealing with the Association, and on his or her default shall form a charge against him or her on the books of the Association and the Attorney shall be paid from its funds.

SEC. 2. He shall immediately place on record the deeds of trust given to the Association for security, and deliver without delay to the Secretary the bonds executed, and the receipts of the Recorder of deeds.

SEC. 3. He shall give bond to the Trustees for the faithful and correct performance of his duty in the sum of two thousand dollars (\$2,000) to be approved by the Board of Directors and deposited with the President. The Board of Directors may require bonds in an increased amount if necessary.

ARTICLE XIII.—*Payments.*

SECTION 1. Each stockholder shall pay a monthly installment of one dollar per share, on the second Wednesday of each month, commencing Wednesday, April 9, 1884.

SEC. 2. Any stockholder neglecting to make the monthly payments shall be fined five per cent. upon each default: *Provided*, no stock-

holder shall be fined more than once on any one month's payment in arrears. Any stockholder, upon payment of arrearages, may have the fines on the same remitted by paying as many months in advance as he or she shall be in arrears: *Provided*, that such stock shall not be withdrawn during the time for which it shall have been prepaid.

SEC. 3. Money received shall be credited first, to insurance, fines and fees; second, to advances; third, to stock.

SEC. 4. Stockholders taking an advance from the funds of the Association shall pay one dollar per month for every share on which such advance is made, in addition to the monthly dues, and if the same shall be unpaid for four months, the Board of Directors may order the Trustees to compel payment by proceedings upon the bond and deed of trust according to law.

SEC. 5. The payments upon stock advanced on, shall be continued until the close of the Association, unless settlement is made in accordance with Article XV.

SEC. 6. Any stockholder failing to pay the installment on his or her shares of stock, and the fines thereon, for one year, shall forfeit all rights in the Association, but may receive upon application a return of the amount actually paid in on account of stock, less the amount of accrued fines.

ARTICLE XIV.—*Advances.*

SECTION 1. The funds of the Association on hand shall be disposed of at each monthly meeting of the stockholders to the highest bidder, but advances shall not be sold on more than ten shares at one bidding.

SEC. 2. The par value of each share shall be two hundred dollars. A stockholder wishing to receive an advance upon his or her shares shall bid the amount which he or she is willing to deduct from the par value of each share, which bid, if accepted, will decide the amount of the advance to be received upon each share.

SEC. 3. Not more than three-fourths of the valuation, as reported by the Valuation Committee, shall be advanced on the real estate offered as security for advances purchased.

SEC. 4. The stockholder obtaining an advance shall secure the Association by bond, deed of trust, and policy of insurance, when necessary, on real estate located in the District of Columbia, United States bonds, or stock of the Association upon which a sufficient amount has been paid to make the security ample, and on failure to give the security required for such advance within one month from the date of purchase, the month's additional payment of one dollar per share shall be made by such purchaser, and the money shall revert to the Association.

SEC. 5. All costs and charges for examination of titles, drawing, acknowledging and recording of deeds, as well as all deeds of release, shall be paid by the stockholder receiving an advance or obtaining a release, and he or she shall assign one share of stock for each share advanced on.

SEC. 6. Whenever the funds do not sell, the Board of Directors shall place the names of the stockholders in a hat and draw therefrom as many shares as there is money in hand to redeem, and the stockholder whose share shall be drawn may, at his option, take either

the amount paid in with six per cent. interest per annum, or may take an advance at the established rate: *Provided*, That no stockholder shall be drawn more than once at any one meeting, except the same be necessary to finally close the Association, or to dispose of the funds on hand.

ARTICLE XV.—*Settlement of Advances.*

Any stockholder desiring to settle an advance shall be charged with the actual amount advanced, together with all arrearages for payments on advances, fines, insurances, fees, and losses, and credited with the amount of dues paid in upon the stock upon which such advance has been made, thereby canceling said stock, and shall be allowed the same amount of interest on said payment of dues as is allowed to shares withdrawn on which no advance has been made, and upon payment of the balance found to be due the Association, shall be entitled to a deed of release.

ARTICLE XVI.—*Transfers and Withdrawals.*

SECTION 1. Stockholders may transfer their stock by presenting their certificates to the Secretary, who shall record such transfer on the books, and charge five cents for each share transferred, and pay the amount to the Treasurer.

SEC. 2. Stockholders wishing to withdraw their stock shall give written notice to the Secretary at a regular monthly meeting, and at the following monthly meeting shall receive the amount of dues paid after deducting fines and a *pro rata* share of losses of the As-

sociation, and after the first year interest at the rate of six per cent. per annum on the amount paid in on their stock: *Provided*, That the amounts withdrawn shall not exceed the amount specified in Sec. 4 of this Article.

SEC. 3. Upon the death of a stockholder the legal representatives shall be entitled to assume the rights, or withdraw the actual amount of dues paid in, with the interest upon the same.

SEC. 4. Not more than one-third of the money received any month will be paid out to withdrawing members.

ARTICLE XVII.—*Closing the Association.*

This Association shall close when the funds in the hands of the Treasurer will redeem all shares advanced on.

ARTICLE XVIII.—*Elections.*

Each stockholder personally present at an election shall be entitled to one vote, and no more. Transfers of stock to enable a stockholder to vote must be made at least ten days before an election, and in no case will a stockholder be entitled to vote unless he or she has complied with the second Section of Article IV of this Constitution. The officers shall be elected by ballot.

ARTICLE XIX.

The Board of Directors shall have authority to keep the books open for subscriptions for stock for twelve months.

ARTICLE XX.—*By-Laws.*

The Board of Directors may enact By-Laws for their own government, not in conflict with this Constitution.

ARTICLE XXI.—*Removal from Office.*

Any elected or appointed officer may be removed by the Board of Directors for sufficient cause in the judgment of a majority of said Board, and another shall be elected or appointed by them to fill the vacancy. No officer shall vote upon any proceeding by the Board upon any charge against himself, or hold a seat at the Board during the investigation thereof.

ARTICLE XXII.—*Amendments.*

Any alteration or amendment to the Constitution shall be submitted in writing at a regular meeting of the Association, and be referred to the Board of Directors for their report thereon at the next annual meeting of the stockholders, or at a special meeting called for the purpose, when it may be adopted if two-thirds of the stockholders present concur therein: *Provided*, however, that Section 5, Article XIII, Sections 2 and 6, Article XIV, Article XV, and Article XXII, shall not be altered or amended except by unanimous consent of the stockholders present.

ARTICLE XXIII.—*Settlement of Disputes.*

It is and shall be a part of the contract between the Association and each shareholders, that no suit at law or in equity shall be instituted or maintained until after the matter in controversy shall have been submitted to the judgment of three disinterested arbitrators, of whom one shall be chosen by the Board of Directors, one by the shareholder concerned, and the third by these two; and the cost of the arbitration shall be mutually borne.

ARTICLE XXIV.—*Number of Shares.*

The stock may consist of not more than three thousand shares.

FINIS.

ADOPTED APRIL 14, 1886.

Amendment to Article 9.

SEC. 5. The Board of Directors may issue after the Second year one or more series of stock to conform in all things to the stock subscribed in the first series.

Strike out Section 5 and insert Section 6.

Strike out in Article XXIV the words three thousand and insert four thousand.

PLAN OF THE ASSOCIATION.

The fundamental principle of the SECOND WORKINGMEN'S BUILDING ASSOCIATION is this: All parties, both the investor and the borrower, shall be equally benefitted as far as possible. Each stockholder pays one dollar per month on a share, with the privilege of borrowing from the Association, on any of its monthly meeting nights, a sum not greater than two hundred dollars, the exact amount being decided by the competition for the money; for this sum he pays one dollar extra each month until the Association winds up, or until his payments on the original stock, with interest at 6 per cent., will equal the amount borrowed.

affairs of said association, when for the first time it was ascertained that said Lynch had been guilty of great irregularities in the discharge of his duties as secretary, and had also from time to time accepted money from stockholders to be paid to the treasurer of the association, which money had never been paid by him to said treasurer. As a result of these investigations the said John T. Lynch was on the 12th day of October, 1898, dismissed from the office of secretary of said association. That subsequently, when the papers belonging to the association were recovered from said Lynch, the bond, deed of trust, and other papers connected with the loan made to said David Nelligan were missing and have
22 never since been in the possession of the said association.

He further says that at no time whilst acting as secretary of said association was the said John T. Lynch authorized, as such secretary or in any other capacity, to receive payments from stockholders of money due to the association, nor was such receipts of money nor any act of said Lynch outside of his duties as prescribed by the constitution of the association ever ratified by the association, nor have any payments of money due to the association, other than payments made to its treasurer, ever been recognized as payments made to the association. He further says that said John T. Lynch was never authorized as secretary of said association to turn over to stockholders bonds, deeds of trust, or other papers connected with loans made to stockholders, until after payment by stockholders to the treasurer of the association of their indebtedness, and that no such act of said Lynch has ever been ratified by the association, and that if said Lynch did, as alleged, turn over to David Nelligan the bond, deed of trust, and papers connected with the loan made to said Nelligan, it was without authority, express or implied, and done in fraud of the rights of the said association.

On advice he says that the complainants are not entitled, by reason of any of the matters in the bill alleged, to have said real estate released from the bill created by said deed of trust, and therefore he prays that the relief prayed for be denied and the bill of complaint dismissed.

TIMOTHY D. DALY.

GORDON & GORDON,
For Def't Daly.

23 I solemnly swear that I have read the answer by me subscribed and know the contents thereof; that the facts therein stated of my personal knowledge are true, and those stated upon information and belief I believe to be true.

TIMOTHY D. DALY.

Subscribed and sworn to before me this twentieth day of March,
A. D. 1900.

J. R. YOUNG, *Clerk,*
By R. J. MEIGS, *Ass't Cl'k.*

EXHIBIT T. D. DALY No. 1.

Answer of Elon A. Woodward et al.

Filed March 20, 1900.

In the Supreme Court of the District of Columbia.

JEREMIAH F. NELLIGAN ET AL.	} Equity. No. 20332.
vs.	
ELON A. WOODWARD ET AL.	

The answer of the defendants Elon A. Woodward and James White.

These defendants, for answer to so much of the bill of complaint as they are advised is necessary for them to answer, say:

They admit that they are trustees under the deed of trust from David Nelligan, dated 17th May, 1886, and recorded in Liber 1186, folio 8, of the land records for the District of Columbia, and referred to in the fourth paragraph of the bill, and that said deed of trust has never been released by them, and that no sale under the provisions of said deed of trust has been made by them.

ELON A. WOODWARD,
JAMES WHITE, *Trustees.*

GORDON & GORDON,
For Defendants Woodward & White.

Answer of Defendants Peter M. Becker et al.

Filed March 20, 1900.

In the Supreme Court of the District of Columbia.

JEREMIAH F. NELLIGAN ET AL.	} Equity. No. 20332.
vs.	
ELON A. WOODWARD ET AL.	

The answer of the defendants, Peter M. Becker, William Ward, Thomas Lanegan, John T. Murphy, John O'Connor, and Thomas M. O'Connor, to the bill of complaint.

These defendants, for answer, say they admit that they are shareholders in the Second Workingmen's Building Association; and, answering the matters and things in the bill of complaint set forth, they refer to the answer of Timothy D. Daly, treasurer of said association, filed herein, and, adopting the same, pray that the statements therein contained be accepted as their answer.

P. M. BECKER.
WILLIAM WARD.
THOS. LANIGAN.
THOS. M. O'CONNOR.

JOHN T. MURPHY.
JOHN O'CONNOR.
E. J. WALSH.

GORDON & GORDON,
For Defendants.

31

Depositions on Behalf of Complainant.

Present: Leon Tobriner, Esq., for complainants; William A. Gordon, Esq., for the defendants.

Mrs. MARY NELLIGAN, being duly sworn, testified as follows:

By Mr. TOBRINER:

Q. What is your name? A. Mary Nelligan.

Q. Where do you live? A. I live on Pacific avenue, 2314.

Q. What avenue? A. Pacific avenue.

Q. This city? A. Yes, sir.

Q. How old are you? A. I do not know my age exactly, but I think I am about 58 years of age.

32 Q. Are you the widow of David Nelligan? A. I am, sir.

Q. When did David Nelligan die? A. He died in 1892.

Q. What month? A. The month of December.

Q. What day? A. The morning of the 24th of December.

Q. Where did he die? A. He died at his own home, in the kitchen. He dropped dead.

Q. In what city? A. The city of Washington, D. C.

Q. How long before his death had he lived in Washington? A. He lived there—I don't know the date, but it was in 1863 he came there.

Q. How many children did he leave? A. He left three boys.

Q. What were their names? A. Jeremiah Francis, John Joseph, and David Aloysius.

Q. Did he leave a will? A. No, sir.

Q. At the time of his death did he own any real estate in Washington? A. Yes, sir; he owned two houses, 801 and 803 Grant avenue, corner of Grant and 8th avenue.

(It is agreed that the said David Nelligan was possessed of lots 1 and 2, Johnson subdivision of lots in Wright & Dole's subdivision of Pleasant Plains, situate in the District of Columbia; the
33 property described in the bill of complaint herein.)

Q. Do you remember whether your husband at any time before his death borrowed any money from the Second Workingmen's Building Association? A. Yes, sir; I do. I don't remember the date, though. I was suffering with a stroke of paralysis at the time, and I remember that he borrowed some money about 13 or 14 years ago. He borrowed it in this way: Mr. Nelligan, he had given his note to a man, and the man put the note in the bank. Mr. Nelligan did not have any money in the bank, but he knew that my husband had a little property, and he went and raised the money in the bank; this man did. His name was Robey. When our property on the boundary was about to be sold, lot 5, my brother-in-law came to me and said, "Mary, I think it is too bad that this place of yours is going to be sold, and by raising a little money in the build-

ing association you could save it." Well, I felt so bad at the time that I did not much care about the place, because I would sooner not have it bother me, so he said the place was advertised for sale and about to be struck under the hammer, when my brother-in-law went and got the money from the building association—it was from the secretary or treasurer, I cannot say—and the money was paid, and then we had to pay some little amount in the building association. I do not remember exactly what it was, but I do know that it wasn't much.

Q. Then your husband got some other money from the association? A. Yes, sir; when he bought a little house.

Q. How much did you pay into the building association
34 after you got these loans? A. I cannot say.

Q. About how much a month? A. I cannot say; but the last money he got I know when he went to pay into the association he did not pay more than \$10 a month.

Q. When you borrowed the money from the building association you gave a deed of trust, didn't you? A. All I did was to go and sign my name. I did not do any more, because my husband was a man that—I did not do anything but sign my name, and he attended to everything else.

Q. Was he careful in his money transactions? A. No, sir; he was a very careless man.

Q. You said you had a stroke of paralysis at some time? A. Yes, sir; I cannot remember dates, but I will tell you. It was in December—the 7th of December, 1884. It was the year Cleveland was elected to the Presidency.

Q. In 1886, when you gave this deed of trust, were you still suffering from paralysis? A. Yes, sir, and I suffer yet very much. I have never got over the effects of it.

Q. Did you make any payments to the building association of the monthly dues that were owing to it on account of the moneys your husband had obtained? A. Yes, sir; sometimes he gave me the money and sometimes I would have the money myself. Of course, when he gave me the money it would be paid to the association, and sometimes he would give me the money to pay it and he would go and pay it himself.

Q. When you made the payments, to whom would you pay
35 the money? A. I generally took it to John T. Lynch—to his house.

Q. Did you ever make the payments to anybody else? A. I left the money for John T. Lynch and sometimes I would give it to his wife.

Q. Was John T. Lynch the secretary of the building association at that time? A. Yes, sir.

Q. Do you know whether anybody else was in the habit of making payments to him? A. I do. I was there one evening when I was tormented and worried. I had been asking him for a book on several occasions, and I would go there and he would say, "Aunt Mary, I haven't had time."

Q. Would Lynch say this to you? A. Yes, sir; and this evening I happened to be there and there was—I didn't see the person—but they came in and said that it was Jack Dunnigan, and he was sitting at the supper table.

Q. Who was sitting at the supper table? A. John T. Lynch, and he got up and went and got a book and entered his money in it. I asked him on several occasions for a book, and he would put me off each time with "Aunt Mary, I haven't had time, but the next time I will give it to you," but he never had time to give it to me.

Q. So that neither your husband nor you ever got a building association account book? A. No, sir.

Q. Did you ever pay back to the building association the moneys which you or your husband had borrowed from it? Q. 36 We paid back until the summer of 1890, and this evening that I speak of to you, that he went and got a book for this Dunnigan, why I came away so sick at heart that I told my husband he would have to make sale of the property and try and keep the place that we were in, because we could not, I saw from the way things were going that we could not pay the taxes in both places—in Florida avenue and in Grant avenue.

Q. Then you owned at that time two pieces of property, one on Florida avenue and one on Grant avenue? A. Yes, sir; No. 5 Florida avenue and 803 Grant avenue. I told my husband that I did not see the way to pay the taxes on the property that we were living in and on the property on the Boundary.

Q. Then did you sell either of the places? A. Yes, sir; we disposed of one.

Q. Which one? A. No. 5 Florida avenue.

Q. To whom did you sell that property? A. To Mrs. Taulberg.

Q. For how much money? A. \$2,000.

Q. Cash? A. Yes, sir.

Q. Where was the money paid to you? A. It was paid to my husband in L. Tobriner's office, on 4½ street.

Q. Were you present when the money was paid? A. Yes, sir; I was.

Q. What was done with that money? A. Well, when the money was paid, some time before that my husband seemed to get 37 the idea into his head that he would try and do something if he had a little money, and there was a mortgage of 500 raised on the Florida Avenue place.

Q. Was this money paid out of this money that Mrs. Taulberg paid? A. He raised that mortgage from a horse-trader by the name of Crabtree, and when we got that money he was paid the first one. Mr. Tobriner counted out the money to Mr. Crabtree, and then the balance of the money Mr. Tobriner counted to Mr. Nelligan.

Q. What was done with the balance of that money? A. The balance of that money? When Mr. Tobriner counted it out I took the money in a bundle, so (indicating), and I took it to John T. Lynch, the secretary of the building association. He was in the office, and says I, "Here, John, you take your money out of here,

and give the balance to your Uncle Dave when you are done taking your money."

Q. What did you mean by "taking your money"? A. I meant for him to take the building association money.

Q. And who was "Uncle Dave" that was to get the balance? A. Uncle Dave was my husband, David Nelligan.

Q. So that John T. Lynch was your nephew? A. Yes, sir.

Q. Do you remember the date on which you sold the Florida Avenue property and got the \$2,000? A. The 19th day of April, 1890.

Q. Did John T. Lynch take the balance of the money? A. I know he gave my husband, after he had paid himself for the
38 building association—he gave my husband some money out of that money. He gave me \$50 for my own use.

Q. Do you know about how much money you turned over to John T. Lynch? A. No, sir; I do not; but I can tell you that Crabtree had a mortgage, as I told you, of \$500, at 8 % interest, and the money and the interest on the money was taken out. The money was raised in August, but what day I do not know, and in April the property was sold.

Q. Was it less than \$1,200 that you paid to Lynch at that time? A. Oh, no, sir.

Q. More than that? A. More than that.

Q. Did John T. Lynch, at that time, deliver to you or your husband any papers? A. No, sir; he gave me nothing, any more than he gave me \$10 of that money at the time.

Q. Did you pay any more after that—any more dues to the building association? A. No, sir.

Q. You say your husband died in 1892? A. Yes, sir.

Q. After your husband's death did you pay any money to the building association? A. No, sir.

Q. Did any of the officers or anybody connected with the building association ever ask you to pay anything to them? A. No, sir; I did not know any of them. They never asked me for nothing.

39 Q. Do you know Mr. Timothy D. Daly? A. Yes, sir; I am slightly acquainted with him.

Q. What business was he in in 1890 or 1892? A. He was in the butter and egg business, in the Centre market, as long as I knew him.

Q. Did you ever tell him anything about your payment of this money to John T. Lynch? A. Yes, sir.

Q. When was this? A. Well, I cannot say now whether it was the summer that the property on Florida avenue was sold. I cannot say that.

Q. Was it before or after your husband's death? A. Before he died. M. P. Sullivan and my husband were together one evening and my husband says: "I am rid of the building association now." "Well," says Sullivan, "I don't see how that is. Daly hasn't any account of your money on the books." He came home and told me, and it so upset me and so worried me that I went to see Mr. Daly.

I cannot say when it was, but as soon as I could go I went down to see him, down to the market, and told him what Mr. Sullivan had told my old man.

Q. Just tell us what you said to Mr. Daly. A. I told him that my old man had told me that M. P. Sullivan told him that he had no account of my money in the building association books, and said, "Mr. Daly, we sold our lot on the boundary to make the building association good," and when I said that I heard that he had no account of it, he says, "Now, hush," and then he didn't say any more, and there was an old gentleman came in there to see Mr. Daly, and he made an excuse to me and allowed he would see me in the course of a few days.

Q. Didn't he say anything more to you than "hush"? A. Well——

40 Q. Didn't he say to you, "Don't say anything about that now"? A. He said, "Don't say anything about that now."

Q. Can you tell us just what he said to you? A. "Hush; don't say anything about that now." I came home, and in the course of a few days I got ready again and I went down to see him at the time he appointed for me to see him, and just as I was going towards the railing to go in, there was a young man came to the railing and said that Mr. Daly was not in, but I felt confident that Mr. Daly must be in his office or else he would not send out word.

Q. Did Mr. Daly at that time, when you told him about your payment of the money to the building association, tell you, or in any way intimate to you, that the money had not been paid to the building association? A. No, sir; he never let on. He never said it was paid or it was not paid.

Q. Did you ask the young man who told you that Mr. Daly was not in, whether he was or not? A. No, Mr. Tobriner, I felt so sick at heart to think that people would trifle with me that way that I turned right away from the place and went home.

Q. Did you go to see Mr. Daly after that? A. No, sir.

Q. Did he ever go to see you about it? A. No, sir.

Q. When did you leave Washington? A. I left Washington the 3rd of July, 1898.

Q. And have lived here ever since? A. Yes, sir.

41 Q. From the time that you made this payment to the building association in 1890, up to the time that you left Washington to move to Atlantic City, was there any demand made upon you or notice given to you to make payment to the building association? A. No, sir.

Q. Was there ever any demand made upon you after you lived in this city? A. Yes, sir; Mr. Daly notified me.

Q. Do you remember when that was? A. Yes, sir; I do.

Q. About when? A. It was the last day of October, 1898, because it was Hal-o-e'en eve, and I always go to confession, and go to do my duty, and it so upset me that I could not go.

Q. Your are a Catholic, Mrs. Nelligan? A. Yes, sir.

Q. I read you a letter as follows:

" WASHINGTON, D. C., *October 30th, 1898.*

Mrs. Nelligan.

DEAR LADY: There is no payment to your credit on the books of the association for the seven or eight years. If you don't settle up with the association your property and security will be placed in the hands of the trustees and sold. Mr. Lynch has been succeeded by a Mr. Beck for secretary for the association. I think you had better come and see about the matter.

I am,

Very respectfully,

T. D. DALY,
Treasurer, 1410 8th St. N. W."

42 Q. Is that the letter you speak about? A. Yes, sir.

(Letter offered in evidence and marked Exhibit M. N. No. 1.)

Q. You wrote to Mr. Daly then, didn't you? A. Yes, sir.

Q. I read to you a letter dated "Washington, D. C., November 1st, 1898," as follows:

"DEAR LADY: The last payment made on your account was in September, 1889, of \$12. I think your indebtedness to the association is close to \$1,000, as near as I can tell. The books are in the hands of the secretary, and as soon as he can adjust the books we will give you the exact figures. The books are in bad condition and will require some weeks to adjust and straighten them out.

Very respectfully,

T. D. DALY,
1410 8th Street N. W."

Did you get that letter from Mr. Daly? A. Yes, sir.

(Letter offered in evidence and marked "Exhibit M. N. No. 2.")

Q. I read you a postal card bearing a Philadelphia postmark of November, 1898, in transit, addressed to Mrs. Mary Nelligan, 124 S. Arkansas avenue, Atlantic City, N. J., and reading as follows:

43 "DEAR LADY: If you made settlement with J. T. Lynch, he has not credit-you with it. Your property is still in the association as security for your indebtedness to the association. Mr. Lynch is not secretary for the association any longer. The books of the association are in the hands of experts to straighten them out.

Very respectfully,

T. D. DALY."

Q. Did you receive that? A. Yes, sir.

(Postal offered in evidence and marked Exhibit M. N. No. 3.)

(It is admitted that the three exhibits just read are in the handwriting of Mr. Daly.)

Q. Was this letter dated October 30th, 1898, the first notice that you had about your indebtedness to the association? A. Yes, sir.

Q. After that, Mrs. Nelligan, did you look through your husband's

papers to find out whether there was anything among them in connection with the loan from the building association? A. Yes, sir; I looked through them. I got my boy—I am not an educated woman—I got my son, Frank Nelligan, and Thomas White to look through and examine the papers.

Q. You mean your husband's papers? A. Yes, sir.

Q. Where did you have those papers? A. I had them in my trunk.

Q. Now, I show you paper purporting to be a deed of trust, bearing date the 17th day of May, 1886, from David Nelligan
44 and Mary, his wife, to Elon A. Woodward and James White, trustees of the Second Workingmen's Building Association of the District of Columbia, recorded in Liber 1186, folio 8, of the land records of the District of Columbia, May 17th, 1886, and ask you to state whether this was found among his papers. A. Yes, sir.

(Paper offered in evidence and marked Exhibit M. N. No. 4.)

Q. Now, I show you another paper purporting to be a bond, signed by David Nelligan to Timothy D. Daly, treasurer of the Second Workingmen's Building Association, in the penalty of \$2,000, and bearing date May 17th, 1886, and ask you whether that was among the papers you found in your husband's trunk. A. Yes, sir.

(Paper offered in evidence and marked Exhibit M. N. No. 5.)

Q. I show you a paper purporting to be an abstract of lots No. 1 and 2, the property in controversy, signed by Neal T. Murray, bearing date May 15th, 1886. Was this paper found among your husband's effects? A. Yes, sir; the abstract of title to lots Nos. 1 & 2.

(Paper offered in evidence and marked Exhibit M. N. No. 6.)

(It is admitted by the parties hereto that N. T. Murray was in May, 1886, the attorney of the Second Workingmen's Building Association.)

45 Q. Now, I show you a paper bearing date May 31st, 1886, purporting to be an account between David Nelligan of the Second Workingmen's Building Association, purporting to be certified by John T. Lynch, and ask you whether you found this paper among your husband's effects. Is that one of the papers that was found in his trunk? A. Yes, sir; I recognize it as one.

(Paper offered in evidence and marked Exhibit M. N. No. 7.)

Q. I show you a paper purporting to be an account between David Nelligan and the Second Workingmen's Building Association, bearing date April 19th, 1890, and ask you whether that was also one of the papers found. A. Yes, sir.

(Paper offered in evidence and marked Exhibit M. N. 8.)

Q. Why was it, Mrs. Nelligan, that you never went to see Mr.

Daly about the matter any more after this second trip? A. For the reason, Mr. Tobriner, that I thought perhaps Lynch might have taken the money and used it in his business, and that he had made it good some other time, but still, at the same time, I had suspicions of Lynch, because when he would not give me a book to enter my money in. Of course it made me very suspicious of him.

Q. When you went to see Mr. Daly he told you to hush, and not to say any more about that now? A. Yes, sir.

Q. Why didn't you go back again? A. Because I did not think it was worth while when he treated me so cool the one time, and that as I was a woman—but of course I am not an educated
46 woman, that he would push me away like he did before. I felt sensitive about the way Mr. Daly treated me, and then I never felt well, and have never felt real strong to make an effort to go again, and I though- I would not bother about it, until my husband died, when they notified me; I did not think it was necessary to bother myself about it.

Q. Why didn't you think it was necessary to bother more about it? A. Because they never notified me about paying any money in, and I did not think it was worth while.

Q. What do you mean by that? A. When Mr. Daly wouldn't see me and tell me anything that he knew about the affair, it was no use for me to go to him and tell him all I knew.

Q. But you had told him that you had paid the money to the building association? A. I told him. I knew I paid it, Mr. Tobriner, in your office, and I did not bother any more about it.

Q. Did you understand from Mr. Daly, when you went to see him, that he knew about the payment of the money? A. No, sir; I did not understand anything from Mr. Daly. When I mentioned it to him he said, "Hush, say nothing about that," and I never mentioned it to a soul but to a young lady by the name of Mary Bresnaham.

Q. When was it that you thought that Mr. Lynch might have used the money? Was it the time when you spoke to Mr. Daly?

A. No, sir. It was before that, because he was a young man, just starting in business, and when the first money was drawn out, and my husband could not get the money to pay one certain man, and he kept putting him off.

47 Q. Who kept putting him off? A. Lynch. He would say, "Mary, you go and see when he can let you have the rest of that money that he was to pay to John Fitzsimmons."

Q. That was when your husband was borrowing money from the association? A. It was after the money was borrowed from the association. He could not get the money from Lynch.

Q. Was Lynch the man who was to pay it to him? A. I would rather Lynch to pay it than my old man, because I thought if he got hold of the money he might do away with it.

Cross-examination.

By Mr. GORDON:

Q. Mr. Nelligan, what relation was John T. Lynch to you? A. My nephew; my sister's son.

Q. He was your nephew, and not Mr. Nelligan's nephew? A. My nephew.

Q. Where was it that you gave this money to Mr. Lynch, the balance from the sale of the Florida Avenue piece? A. In Mr. Tobriner's office on 4½ street, below the city hall.

Q. Did you get any receipt from Mr. Lynch? A. No, sir.

Q. Now, how long after this money was given to Mr. Lynch was it that you went to see Mr. Daly? A. I cannot say whether it was the same summer that the property was sold or the next summer.

I could not say.

48 Q. Was it before or after your husband's death? A. Before his death.

Q. You went to Mr. Daly, you say, because you felt some anxiety in regard to the payment of the money? A. Yes, sir.

Q. Did you say anything to your husband about going to see Mr. Daly? A. No, sir; I did not.

Q. After your interview with Mr. Daly, when he said "Hush," did you tell your husband about the treatment that you received from Mr. Daly? A. No, sir; I did not, because my husband was a man who would right away say I took too much liberty, but I thought it was my place to go and see Mr. Daly.

Q. Then you went to see Mr. Daly at his house, and didn't see him? A. No, sir; not at his house, but at the Centre market.

Q. Did you say anything to your husband about that visit? A. No, sir.

Q. After going to see Mr. Daly and getting no satisfaction from him, did you say anything to Mr. Lynch about this matter? A. No, sir; I did not breathe it to no one, only to this young lady that I speak about, and I said to her that it was very strange that Mr. M. P. Sullivan would tell my husband that he had no account of the money we paid on the books, because I was afraid I might injure Mr. Lynch's reputation.

Q. You say your husband died in 1892? A. Yes, sir.

49 Q. Did he leave any papers at the time of his death? A.

Yes, sir; those papers that Mr. Tobriner has showed me. I recognize them as the papers that he left among his effects.

Q. After his death, what did you do with the papers that he left behind? A. Well, I kept them in my trunk.

Q. Did you ever look over any of those papers? A. If I did I couldn't tell what they were.

Q. Did you at any time after this money was paid to Mr. Lynch, and up to the time that these young gentlemen looked through these papers, did you know, at any time, of the existence of these papers? A. No, sir; I did not know until my son Frank and Thomas White looked over my papers. I did not know that I had

a thing to show. I did not think I had the scratch of a pen to show for my money.

Q. Have you ever heard anything in regard to this building association debt from Mr. Lynch since a demand was made on you in October, 1898? A. Well, I do not exactly understand that. I wrote to Mr. Lynch and he sent me a telegram saying, "Aunt Mary, don't worry." Is that the telegram, Mr. Tobriner? (Witness looks at paper.) Yes; I recognize that as the telegram.

Q. Did you hear anything from him after that in regard to that matter? A. Yes, sir; my son went to Washington—Frank Nelligan—but I do not know what he said to him.

50 (Telegram offered in evidence and marked Exhibit M. N. No. 9.)

MARY NELLIGAN.

FRANK NELLIGAN, being duly sworn, testified as follows:

By Mr. TOBRINER:

Q. Your first name is what? A. Jeremiah.

Q. What is your age? A. I will be 35 this 20th day of August.

Q. Where do you live? A. 1912 Atlantic avenue.

Q. What business are you engaged in? A. Fancy meats and game.

Q. Are you a son of David Nelligan, who formerly resided in Washington? A. Yes, sir.

Q. How many brothers and sisters have you? A. Two brothers.

Q. No sisters? A. No, sir.

Q. You have heard your mother testify? A. Yes, sir.

Q. Up to what time did you live in Washington, Mr. Nelligan? A. 1889.

Q. Then you left before your father died? A. Yes, sir.

51 Q. Do you remember his borrowing money from the Second Workingmen's Building Association? A. Yes, sir.

Q. Did you ever make payments to the association? A. Yes, sir.

Q. To whom did you make those payments? A. Mr. John T. Lynch.

Q. Were you present when your father sold the property known as No. 5 Florida avenue to Mrs. Taulburg? A. No, sir.

Q. Did you at any time have a conversation with Mr. Lynch with respect to the indebtedness, if any, from your father's estate to the Second Workingmen's Association? A. Yes, sir; I did.

Q. When was that? —. About three or four days after my father was buried.

Q. In what year did your father die? A. In 1892.

Q. At that time you went on to Washington? A. Yes; I went on to Washington, and after the funeral was over I went to see Mr. Lynch with my brother, John J.

Q. What took place at that time? A. I told Mr. Lynch that I

would like to know how the building association and my father stood, as I was going away and did not know when I would return, and that I would like for him to tell me, in my brother's presence, how this stood, and he said that we owed the building association nothing.

Q. Did he tell you when your father had settled up? A. No, sir.

Q. How long did you remain in Washington at that time? A. Four or five days, or probably a week.

52 Q. That satisfied you, I suppose? A. Yes, sir; that satisfied me. When I asked him how we stood with the building association he said my father had paid him. He said there were outside transactions, and that there was a difference on that, but as far as the association was concerned we owed nothing.

Q. And from that time on did the association ever call on you or any of its representatives call on you to make a payment? A. No, sir.

Q. When did you first know that the association claimed a lien on this property? A. In the fall of 1898.

Q. How did you ascertain it then? A. Mr. Daly wrote to my mother and I read the letter to her.

Q. Is that the letter of October 30th, 1898? A. I presume that is the letter.

Q. What did you do about the matter at that time, if anything? A. Why, my mother told me to write to Mr. Daly and tell him that she did not owe the association anything, and that it had been paid many years ago, and I wrote that letter.

Q. Did you get a letter in reply to that? A. Yes, sir; we got a letter in reply; probably in a week or so.

53 Q. Was it the letter of November 1st or the postal card, Exhibits M. N. No. 2 & 3 (showing witness papers)? A. I think this letter of November 1st is the one.

Q. Did you do anything about the matter after that—after receiving these letters? A. Not that I know of, with the exception of engaging counsel.

Q. Did you ever have a talk with Mr. Lynch? A. Yes; I wrote to him and saw him, both.

Q. Was it after the receipt of these letters that you saw him? A. Yes, sir; it was last March, I think; in his mother's yard.

Q. Just state what took place. A. My mother sent me there to inquire from him about this matter, and he told me to tell her not to worry, that she knew that thing had been settled; that that money was paid at the time she got the money from Mrs. Taulberg, and I told him and said that was what we all understood, but that Mr. Daly had written to my mother and said that we owed the association \$1,000, and he said, "Mr. Daly is a damn liar, and he knows better than that," and he patted me on the shoulder and said, "Frank, you tell your mother not to worry, for everything is all right," so we shook hands and I left him, and have not seen him since.

Q. That was after this suit had been instituted, wasn't it? A. That was last spring, I think, about March.

Q. Was it before the month of April, 1899? A. To the best of my belief, I think it was before the month of April.

Q. After you got this letter of October 30th, 1898, from Mr. 54 Daly, did you examine your father's papers? A. I did.

Q. Will you take up these Exhibits M. N. Nos. 4, 5, 6, 7, & 8 and tell us whether you found those papers among your father's effects? (Witness examines papers.) A. I did.

Q. How long have you known John T. Lynch? A. About 33 years.

Q. Are you acquainted with his handwriting? A. Yes, sir; I am.

Q. And know his signature? A. Yes, sir.

Q. I ask you to look at Exhibit No. 7 and state in whose handwriting that statement is and whether those are his signatures on the various paragraphs in the statement. A. To the best of my belief, those are his signatures.

Q. Is that statement in his handwriting? A. Yes, sir.

Q. I ask you to look at Exhibit No. 8 and state in whose handwriting that statement is. A. That is in Mr. Lynch's handwriting.

Q. I think I asked you whether any demand had ever been made upon you or your brothers, so far as you know, for the repayment of the amount claimed by the building association as security upon the property in controversy? A. No; there was never a claim made. If there had been we would have looked it up and attended to it. That is the reason why I went to see John T. Lynch, when my father died, to see if this building association was all fixed.

Q. You left Washington in 1889? A. Yes, sir.

55 Q. At that time you knew he owed the building association? A. Yes, sir. My father told me when I saw him that he had settled with the building association.

Q. And you wanted to be sure about that? A. Yes, sir; and my brother was there with me.

Q. For whose benefit was the property managed after your father's death? A. For the benefit of my mother.

Q. She drew the rents and used them? A. Yes, sir.

Q. Is that the only property that your father left? A. That is the only property that my father left.

Cross-examination.

By Mr. GORDON:

Q. Did you make inquiry of any other officer of the building association except Mr. Lynch in regard to that debt? A. No, sir; not to my knowledge.

JEREMIAH F. NELLIGAN.

THOMAS WHITE, being duly sworn, testified as follows:

By Mr. TOBRINER:

Q. What is your first name, Mr. White? A. Thomas.

Q. Where do you reside? A. 416 Baltic avenue.

56 Q. How long have you lived here? A. A couple of years.

Q. Did you ever live in Washington, D. C.? A. Yes, sir.

Q. Up to what time? A. Well, the last time I left Washington was the 8th of March, about two years ago.

Q. Did you know John T. Lynch? A. Yes, sir.

Q. What is your father's name? A. Michael.

Q. Where does he live? A. In Washington.

Q. At what address? A. 2626 Brightwood avenue N. W.

Q. Was he interested in the Second Workingmen's Building Association? A. He had been some years ago, but not of late years—that is, I do not think he has been of late years. I know he was in 1891 or 1892, but I think he drew out.

Q. At that time were you in the habit of making payments for him to the building association? A. I had been.

Q. What would be the mode of making those payments? A. If my father did not care to attend a meeting he would hand the book to me or my brother, and we would take it down to Lynch's house, or to his father's house, where he was living at that time.

Q. Who would you give the money to? A. Mr. Lynch. We would give him money and book, and I remember his receipt very well. He would sign his initials, J. T. L., when he received
57 the money. I have paid him money at the meeting when the old office used to be at 8th & E at one time.

Q. How often did you carry money to him? A. Once a month.

Q. You say you have paid money to him at the meetings? A. Yes, sir; I remember paying money to him when the office used to be at 8th & E, now the Busch building.

Q. Would he receipt for the money on those occasions? A. He would if Daly was not there.

Q. Do you know of other persons who did the same thing; other stockholders? A. I understood that others did the same. I do not know personally, but I have heard that they did.

Q. About what year was it that you made these payments on behalf of your father? A. I am not certain about that. My father belonged to the Second Workingmen's Building Association from the time it first started up, I think, until 1892.

Q. How much did Lynch have in the management of the association? A. He seemed to be the whole thing.

Q. Ran the whole business, did he? A. I think he did.

Q. Did you help or assist Mr. Frank Nelligan and Mrs. Nelligan to look through David Nelligan's papers? A. Yes, sir.

Q. I show you these exhibits marked M. N. 4, 5, 6, 7, & 8, and ask you to say whether you found those among Mr. David
58 Nelligan's effects. (Witness looks at papers.) A. Yes, sir.

Cross-examination.

By Mr. GORDON:

Q. Do you remember how many times you paid money at the meetings of the Second Workingmen's Building Association? A. No, sir; I do not remember how many times, but I remember I was there several times.

Q. More than once? A. I only remember paying money at the meeting one time. I have been to the meeting often, but I haven't paid money there, but have paid money to Lynch at his house, or his father's house rather.

Q. Then, on the one occasion when you did pay the money at the meeting, to whom did you pay it? A. I think Mr. Lynch receipted for the money; am pretty positive of it, because in looking over the book when Daly signed the initials were T. D. D., and when Lynch signed it was J. T. L., and there were as many J. T. L.'s on the book as T. D. D.'s.

Q. Do you know whether Mr. Daly, the treasurer, was present at the time you paid the money? A. I am not positive about it, sir.

THOMAS WHITE.

59 DAVID A. NELLIGAN, being duly sworn, testified as follows:

By Mr. TOBRINER:

Q. What is your first name? A. David A.

Q. How old are you? A. I am 25 years of age.

Q. Where do you live? A. 2314 Pacific avenue.

Q. You are a son of the late David Nelligan, of Washington, D. C.? A. Yes, sir.

Q. And brother of Jeremiah Frank Nelligan? A. Yes, sir.

Q. Were you living home with your father at the time of his death? A. Yes, sir.

Q. And how long had you lived home prior to that time? Had you been away from home? A. No, sir; I had been home always before that.

Q. Do you remember whether you made any payments on account of your father's indebtedness to the Second Workingmen's Building Association? A. No, sir; I never did.

Q. What do you know of other persons making payments to that association? A. There is a lady who used to keep a store, who was a friend of my mother's, and she sent me down one time to Mr. Lynch's house.

Q. What for? A. To pay the building association. She
60 gave me a book and the money.

Q. What building association was it? A. The Second Workingmen's.

Q. Whom did you pay the money to? A. Mr. Lynch's wife came to the door and took the money and the book back, and he brought the book back to me, and I took it to the lady.

Q. Did you look into the book at that time? A. No, sir.

Q. Do you know anything about this indebtedness which is claimed as a lien upon the property which you have an interest in?

A. Yes, sir.

Q. What do you know about it? A. I know that father sold a couple of lots on Florida avenue to pay the building association.

Q. What else do you know about the payment? A. I hooked up the horse and wagon for my father and mother to go and get the money from Mrs. Taulburg, and after they got the money they paid the money to the Second Workingmen's Association.

Q. Were you present at that time? A. No, sir.

Q. And you only know that from what they told you? A. Yes, sir.

Q. From the time when they told you that they had paid it, did the building association ever make any claim, so far as you know, upon the property? A. No, sir.

DAVID A. NELLIGAN.

Endorsed: Published in open court the 27th day of Feb., 1901.
A. B. Hagner, justice.

61

EXHIBIT M. N. No. 7.

WASHINGTON, D. C., *May* 31, 1886.

Mr. David Nelligan in acc't with the Workingmen's Building Association.

DR.

To advance on 5 sh., May, 1881.....	\$680 00
" premium.....	42 00
" fines.....	2 50

CR.

By cash paid on stock.....	\$333 00
" interest... ..	81 58
" amount due the association.....	309 92
	<hr/>
	\$724 50 \$724 50

Attest: JOHN T. LYNCH,
Sec. W. B. A.

There was only the sum of \$10.00 paid in the old association after March, 1885, and the \$309.92 was paid out of the \$525.00 drawn from the new association in May, 1886, or the time Barbour's note was paid.

JOHN T. LYNCH.

WASHINGTON, D. C., *March* 19, 1887.

1886.

DR.

May 31.	To amount due the old association, see	
	statement 1st page.....	\$309.92
" "	" paid for Barbour note.....	184.28
" "	" examination of title.....	14.00
" "	" recording deed.....	2.75
1887.		
Jan. 11.	" amount paid Fitzmorris.....	100.00
" "	" " " Newton.....	20.00
" "	" costs of court by Murray....	5.75
" "	" insurance of house.....	5.50
" "	" amount paid for dues.....	42.80
		<hr/>
		\$685.00

DR.

"	amount due on 6 sh. for 11	
	months.....	66.00
"	amount due on 3 sh. for 10	
	months.....	30.00
"	amount due on 1 sh. for 2	
	months.....	2.00

CR.

By amount paid.....	.....	\$42.80
" Mary Nelligan's credit.....	.....	35.00
" amount due Mar. 19, 1887.....	.....	20.20
	<hr/>	<hr/>
	\$98.00	\$98.00

July 25.	Amount due Mar. 19.....	20.20
" "	Dues since that date.....	47.30
" "	Amount loaned.....	95.00
" "	Sheehy note.....	90.95
" "	Insurance.....	5.75
" "	Examination of title.....	1.00
		<hr/>
		\$260.20

David Nelligan in acc't with John T. Lynch.

1886.

CR.

By amount on 3 sh., May, 1886	\$525.00
" " 1 " Jan., 1887.....	160.00
	<hr/>
	\$685.00

Mary Nelligan paid the sum of \$50.00 on 5 shares in the new association, in her own name, which she is credited with, less the amount loaned on her visit to Hagerstown.

JOHN T. LYNCH.

July 25:

Amounts of order No. 282	\$324.00
Amount paid per Dr. side	\$260.20
" paid July 25.....	63.80
	<hr/>
	\$324.00

64

EXHIBIT M. N. No. 8.

WASHINGTON, D. C., *April* 19, 1890.

Mr. David Nelligan in account with the Second Workingmen's
Building Association.

DR.

To advance on 3 sh., May, 1886	\$525.00
" " 1 " Jan., 1887	160.00
" " 2 " July, "	324.00
" premium	42.00
" fines	3.60
	<hr/>
	\$1,054.60

CR.

By cash paid on stock	\$182.85
" interest.....	21.98
	<hr/>
	204.83
	<hr/>
Amount required to settle	849.77

65

EXHIBIT M. N. No. 9.

(Telegram.)

Received at 12 P Kx Sm 12 paid 1132 A.

WASHINGTON, D. C., *Nov. 5th*, '98.

Mary Nelligan, 1912 Atlantic Ave., Atlantic City, N. J.

AUNT MARY: I got your letter will answer right away don't
worry.

JOHN T.

Depositions for Complainants.

Present: Mr. Leon Tobriner, for complainants; Mr. Wharton E. Lester, for defendants.

Whereupon MARY STAFFORD, a witness of competent age produced on the part of the complainants and being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. TOBRINER:

Q. What is your name and where do you reside? A. Mary Stafford, 2355 Sherman avenue.

Q. What was your name before you were married? A. Mary Bresnahan.

Q. Were you ever a member of the Second Workingmen's Building Association? A. I guess so; that little book calls for it (indicating pass book).

Q. Is that the book you had (showing witness book)? A. 67 That is the book, sir.

Q. To whom did you make your payments? A. Mr. Tobriner, when I first went there; it was a man I worked for by the name of Getzen; he got the shares out of the building association; he used to pay—you can see they are marked with Mr. Daly's name; I know nothing about it; I never went to a meeting; and afterwards either my mother or me would pay; we would take it down and go up to Mr. Lynch's house. I drew it out and got all the money.

Q. Who paid it to you? A. Mr. Daly; down at the butter merchant's place.

Q. When you would take the money to Mr. Lynch would he write it in your book? A. I couldn't tell you, I declare; I am so—that is the book, all I have accounted for. That is all I have to account for, because I got the money from that man (indicating defendant Timothy D. Daly). He paid me the money when I went to get out.

Q. Did you take this book as it is now to Mr. Daly when you got your money? A. I don't know, sir; I don't remember about it; it has been a good while ago; I don't remember whether that book went or not; that certainly is it.

Q. How much money did you get from the building association? A. I can't tell you that; I don't know exactly what was handed to me, because I had the papers for it, you know, and John Lynch asked me afterwards——

Q. Asked you afterwards what? A. If I found everything 68 all right, and I tell you I would not read the papers for I had such faith in the man, I never read them over, and before that I guess I was right; at least I thought that way.

Q. Did you take any of the money to Lynch when you made the payments yourself?

Mr. LESTER: Objected to as leading.

A. I used to take it to the house, I think, and my mother also.

Q. I am speaking of yourself. A. Yes; I think I took the book; nobody else but me and mother went to his house; I never went to a meeting; I don't remember anybody else except Mr. Getzen; of course, you have it there (indicating book heretofore referred to).

Q. I am asking you—I want to know if you took this book. A. I went to his house—to Mr. Lynch's house—and I think I took the book with me, I think, and I would leave it there. It has been some time ago. He had it himself part of the time.

Q. Where did you get the book from when you got it back? A. Oh, I think I had it then, Mr. Tobriner.

Q. Whom did you get it from? A. I must have got it from Mr. Lynch; I have not had any transactions with anybody else, except the day Mr. Daly handed me the money.

Mr. TOBRINER: I offer this book in evidence.

NOTE.—And the same is filed by the examiner and marked "Complainant's Exhibit J. J. C. No. 1."

69 Cross-examination.

By Mr. LESTER:

Q. How long have you known Mr. Lynch? A. Since I was a child, I think.

Q. Are you any relation of his? A. No, sir.

Q. No connection by marriage? A. None whatever.

Q. Just simply know him? A. Have just simply known John Lynch; he has been up that way—

Q. How far did you live from his house? A. Three or four squares; something like that.

Q. You say somebody else paid this? A. The man I worked for, sir.

Q. Did you borrow money from the building association? A. At one time I took a share out; I used to pay a dollar a month.

Q. You did borrow money from the building association? A. One time I had it in there I drew a share.

Q. You never borrowed money on real estate? A. No.

Q. You simply paid in and drew money out from time to time? A. Yes, sir; and got what I paid in.

Q. And you say that the first time somebody else used to make your payments for you? A. Yes, sir; he owed me the money and he used to say it was a good place to put it.

70 Q. For how long did that last? A. I don't know; just look at that book, sir. He owed me the money, and he used to pay it, sir; I could not say exactly how much it was.

Q. You don't know how long, then, this Mr. Getzen paid for you? A. No, sir.

Q. Have no recollection? A. No, sir; I have not.

Q. Can you look at that book and tell? A. The only way I can tell is to see Mr. Daly's name, because I never went to a meeting.

Q. You did on some occasions take money to Lynch's house and give it to him? A. Yes, sir; and my mother also; I never had any dealings except with Mr. John Lynch; I never had any dealings except that I wanted the money and Mr. Daly paid me.

Q. When your mother went to see Mr. Lynch, did you go with her? A. Not always.

Q. How do you know that she paid Mr. Lynch? A. I don't know, except seeing his name on the book.

Q. And what she told you? A. Yes, of course.

Q. And that is what you mean when you say that she paid him? A. Yes, sir.

Q. How often did you go to pay Mr. Lynch? A. I couldn't tell.

Q. Many times? A. I don't know, sir, how often; I don't say what I don't remember.

71 Q. Can you recollect when you ever went yourself and paid money, or didn't your mother always go? A. I used to go myself sometimes.

Q. How often? A. I don't know.

Q. As many as a dozen times? A. I can't tell you; there is no use talking, I don't know the number; I never paid enough attention to it to tell.

Q. As many as two times? A. More than two.

Q. Half a dozen times? A. I don't know; I certainly don't; I don't say only what I know; it has been a long time ago; I don't remember.

Q. Can you tell us those dates? A. No, sir; I can't tell no dates, and that is the reason I brought that book; I thought you could tell without asking me any questions.

Q. What did you do when you went there to see Mr. Lynch? A. I don't remember of doing anything.

Q. You must have done something; did you pay him money? A. I would; I would leave it in the book; I would leave the money in the book if he was not there.

Q. With his wife? A. Yes, sir; and if he came to the door I would hand it to John Lynch.

Q. You would simply put the money in the book and hand it to Mr. or Mrs. Lynch? A. Yes, sir; maybe at the time I would leave it and would go again; the book would be fixed and he would hand me the book.

72 Q. How many times did you pay the money to Mrs. Lynch? A. I don't know that, sir.

Q. Do you recollect that Mr. Lynch himself ever came to the door and got the money, or didn't you always just leave it at the house for him? A. He used to be there himself sometimes.

Q. As many as two times? A. I think so, now, to the best of my recollection; I think it was two.

Q. Can you swear that you ever saw him more than two times,

when you gave him money—he himself? A. I wouldn't like to swear; it is so long I wouldn't like to swear to it.

Q. But you do swear that on two occasions you handed Mr. Lynch this book? A. To the best of my knowledge, I gave it to him two times.

Q. How much money? A. Ten and eleven dollars at times; you will see that I was paying ten and then eleven dollars.

Q. Do you know whether you paid Mr. Lynch ten dollars or eleven dollars? A. I paid him eleven dollars after I took a share; you see, I paid that one dollar after I took a share.

Q. You don't know whether you paid Mr. Lynch himself—whether you handed it to him? A. I don't know that.

Q. Now, you don't know whether you paid him ten dollars
73 or eleven dollars? A. No, sir.

Q. You do remember that you handed him this book? A. Yes, sir; he would have it at times.

Q. Mrs. Lynch would have it at other times; you would leave it up there and the next time you would go you would probably get it? A. Yes, sir.

Q. And you remember that there were two occasions on which you left it with Mr. Lynch himself? A. Yes, sir.

Q. Do you know what he did with the money? A. I suppose he put it in the association. I got it back again afterwards.

Q. Now, do you remember the occasion of your getting it back? A. Do you mean why I took it out?

Q. No; not that; do you remember the fact that you got it back? A. Yes, sir.

Q. What did you do to get it back? A. I don't know; nothing but to tell John Lynch that I wanted my money.

Q. Who gave you the money? A. Mr. Daly.

Mr. TOBRINER:

Q. Mr. T. D. Daly, the gentleman sitting next to Mr. Lester?

74 A. Yes, sir; he gave me a note and put his name on the back of it and I went up to the bank; my mother was with me.

Mr. LESTER:

Q. When you wanted this money you say you told John Lynch? A. Yes, sir.

Q. Did he give you a statement of your account? A. He gave me some papers, yes, sir, but I don't know where they are.

Q. And you took these papers to Mr. Daly and got your money? A. Yes, sir.

Q. Do you know what they were? A. No; but I thought it was to get the money from Mr. Daly.

Q. Did you read them? A. I just glanced over them; I didn't bother to read them because I was so sure they were right; I didn't bother about them, I just glanced at them——

Q. (Interposing.) You don't know now what they were? A. No,

sir; I don't know now, and it is just by chance that I had that old book.

Q. You gave these papers to Mr. Daly and he gave you a note?

A. Yes, sir; I went to the bank; he put his name on the back of it and I went to the bank.

Q. Was it a note or a check? A. I guess it was a check; I don't know a note from a check; I know I got the money; that is all I know.

75 Q. Will you kindly read me these three items there (handing witness Complainants' Exhibit J. J. C. No. 1)?

A. (Witness reads:) May 14th, by cash, twenty dollars; June eleventh, ten dollars; July ninth, ten dollars.

Q. Now, you didn't take this statement which Mr. Lynch gave you and read it over as you have these to see what it was? A. I just glanced at it.

Q. Did you know how much money was due you at that time?

A. No, sir; nothing but that book.

Q. Do you know how much you received? A. No, sir; I can't tell you.

Q. Did you add this book up to see how much was due you?

A. I think I added it up, added the payments, but I didn't know about the interest.

Q. Did you add it up at the time you got the money? A. I believe I did, but I didn't know exactly about the interest.

Q. Do you know how much interest you got? A. I could not tell you.

Q. Then you don't know whether you got back all the money you paid in or not? A. Yes; I do. I know I got it all back.

Q. How do you know? A. I imagine it; you couldn't make me believe I didn't get it all back.

Q. Did you have any means of telling how much money you put in except by this book? A. That is all, sir.

76 Q. At the time you got your money out you didn't add up to see how much you had put in? A. I did add up, but I didn't know about the interest.

Q. And you don't know now about the interest? A. I don't.

Q. And you didn't go over the statement which you say Mr. Lynch gave you and you gave Mr. Daly to see whether the amount was right or not? A. I didn't go over it; I glanced at it.

Q. You say that when you paid Mr. Lynch you think you took the book with you? A. At times, and at other times the book would be there.

Q. Are you sure that you ever took the book with you when you paid him? A. I think so, sir.

Q. But you don't know? A. To the best of my recollection, I did, sir.

Q. The book may have been there with him or somewhere else, and he got it and gave it to you afterwards? A. I took to it sometimes, to the best of my belief, but I can't tell you, sir.

Q. But you have no distinct recollection of handing him the book

with the money; he may have had the book before you handed him the money? A. I don't know; I kind of think. I ain't sure, but I kind of think; I ain't sure, but I think I would. I never see him put his name down, because he had the office upstairs.

At times he used to have the book; I ain't sure, but I think
77 I used to hand the book to him. I ain't sure about that part; I paid no attention to it.

Redirect examination.

By Mr. TOBRINER:

Q. Mrs. Stafford, your best recollection is that you usually kept this book at home, and when you paid the money you took the book down to Lynch's?

Mr. LESTER: Question is objected to as leading and prompting the witness and as not redirect examination, the whole matter having been gone over in chief.

A. That is the best of my recollection, but at times that book was there, Mr. Tobriner.

Q. At Lynch's house? A. Yes, sir.

Q. Do you know about how much you got from the building association—about how much?

Mr. LESTER: Objected to as not proper redirect examination.

A. I certainly don't know.

Q. Was it a hundred dollars? A. Yes, sir; it was seven hundred and some odd dollars. I ain't sure, but I think seven hundred and odd dollars, I think it was, or nine hundred. I don't know which to put; remember I had taken one share out.

MARY STAFFORD,
By J. J. CANTY.

Subscribed before me this 29th day of May, A. D. 1901.

J. J. CANTY,
Examiner in Chancery.

78 Whereupon MICHAEL D. WHITE, a witness of competent age, produced on the part of the complainants and being first duly sworn according to law, was examined and testified as follows:

Direct examination.

Mr. Mr. TOBRINER:

Q. State your name and residence. A. Michael D. White; 2626 Brightwood avenue.

Q. What business are you in? A. Why, doing nothing—but very little.

Q. Retired from business? A. Retired or not retired, doing all I can.

Q. What business were you in? A. I was at one time farming and dairying, carrying on dairying business and farming in conjunction.

Q. Were you ever a member of the Second Workingmen's Building Association? A. Yes, sir.

Q. Do you know when you went out of the association; about how many years ago? A. I couldn't tell you. I can—I guess I can find it, but I kept no record of it.

Q. Have you your book, you think? A. I think there ought to be a book in my desk if I can find it.

Q. Were you—did you know John Lynch? A. Yes.

Q. What place did he hold in the association? A. He was secretary.

79 Q. Who was treasurer at that time? A. Mr. T. D. Daly.

Q. How much were you paying into the association? A. I was paying in a whole lot at that time; I was paying in sixty dollars a month.

Q. To whom and where would you make your payments? A. Well, I would generally go to the building association.

Q. Where was their place of business? A. I forget their place. I forget the street.

Q. Was it a house or not? A. It was a house.

Q. Whom would you see there? A. Oh, I would see a good many there; all the members—Mr. Lynch and Daly and others.

Q. To whom would you make your payments when you make your payments when you went there? A. Chiefly to Mr. Daly; sometimes, I think, I paid to Mr. Lynch; sometimes they were busy there and he would receive it.

Q. Whom do you mean by "he"? A. I mean Mr. Lynch; he would. I said Lynch; he would receive it.

Q. Did you get a receipt for the money you paid? A. I got a receipt in the book; he would mark down his name.

Q. Was Mr. Daly there at those times? A. Yes.

80 Q. Where would Mr. Daly be when you would pay Mr. Lynch? A. He would be sitting there at the table; sometimes there would be a crowd around there and the members of the association would be in a hurry, and Lynch would be ready to receive it, and would hand the money over, I presume, to Mr. Daly.

Q. When Lynch received the money in what name did he receipt?

Mr. LESTER: Objected to; the receipt will speak for itself.

A. In his own name; signed his name as receiving it.

Q. Will you look for that book? A. I will look for it; I can possibly find it. It is of no interest to me whatever; if it is any interest to you I will produce it if I can.

Cross-examination.

By Mr. LESTER :

Q. Mr. White, did you borrow money from the association or simply invest? A. I borrowed and invested; at first I invested and then borrowed.

Q. When you borrowed money from whom did you receive it? A. From Mr. Daly; through him I got it.

Q. When you paid back the money you borrowed, which I presume was on real estate, to whom did you pay it? A. Mr. Daly.

Q. How many times can you recall when you were at the office of the company and paid any dues to Mr. Lynch? A. I cannot tell that.

81 Q. Can you remember as many as three times? A. Yes; I guess so.

Q. You think so? A. Yes, sir.

Q. Can you remember more? A. I couldn't tell you now.

Q. Is it a fact that when you paid money to Mr. Lynch he and Mr. Daly would be sitting side by side, each one checking up as it was being paid in? A. Yes; they would be very close neighbors; they wouldn't be very far apart.

Q. They would be sitting side by side at a table or desk? A. Yes, sir.

Q. Receiving the money and receipting for it? A. Yes, sir.

Q. Isn't it a fact that you would hand the money with the book to Mr. Daly, and that he would make the entry in his *door*, and hand it over to Mr. Lynch to make the receipt in the book and hand it back to you; isn't that the way it was done? A. No, sir.

Q. How was it done? A. I would give the book and the money to Mr. Lynch. He would receipt for the money and put his signature down.

Q. What would Mr. Lynch do with that money? A. I don't know anything about it.

Q. Didn't you see him right then and there hand it to Mr. Daly?

A. I see him hand it up there; yes.

82 Q. Just as you handed it to him? A. Yes.

Q. In other words, you passed it to Mr. Daly, through Mr. Lynch? A. I didn't pass it to Mr. Daly; I passed it to Mr. Lynch; in a great many cases I wouldn't give the money to Mr. Daly until I had Lynch's signature to it first. In paying it I would give the money to Lynch, and Lynch signed for it.

Q. And Lynch handed it immediately to Daly? A. Yes, sir.

Q. They were sitting side by side? A. Yes, sir.

Q. And Mr. Lynch would hand the money to Mr. Daly? A. I guess he would.

Q. You knew Mr. Lynch was secretary, didn't you? A. Yes, sir; I did.

Q. You knew Mr. Daly was treasurer? A. I did.

Q. You knew Daly was the one to receive the money? A. I did.

Q. Didn't you see Mr. Lynch hand him your money when you would hand it to him? A. I guess so.

Q. For what purpose was Daly there? A. As treasurer.

Q. To receive money? A. As treasurer.

Q. To receive money? A. That is the significance of it; he was treasurer.

83 Q. Other people were paying money to Daly, too? A. Undoubtedly.

Q. You saw it? A. I did.

Q. Were you ever present at a meeting in your life when Daly wasn't there? A. I think I never was.

Q. And you never paid Mr. Lynch any money for the association except when he was sitting right by the side of Daly, did you? A. I don't know. I think he was paid at his house, to the best of my recollection.

Q. You think you paid it at his house, too? A. Yes.

Q. I am asking about at the association rooms. You never paid Lynch any money except when Daly was there and Lynch was sitting right by him? A. I think so.

Q. How many times did you ever pay Lynch money at his house? A. I couldn't tell you.

Q. Did you ever pay him any at his house? A. To the best of my recollection, I did.

Q. Do you recollect the fact that you did go to his house and pay him money? A. I said, to the best of my recollection, I did.

Q. You don't know whether you went to his house and paid him money? A. To the best of my recollection, I did.

Q. But you don't know positively? A. I said, to the best of my recollection.

84 Q. You can answer my questions very clearly. Can you swear that you went to his house and paid him any money for the association? A. I said, to the best of my recollection.

Q. Do you remember the fact of your going to his house on any occasion and paying him money? A. I told you, to the best of my recollection, I did.

Q. When was that? A. During the time of the existence of the building association.

Q. How long did the building association exist? A. I can't tell you that, either.

Q. A number of years, didn't it? A. Yes, sir.

Q. Can't you tell me something more definite than that? A. I don't have any record of it; if I could see the book I could tell you, but I got disinterested in it and dropped it from my memory.

Q. Was it in the summer that you went to his house? A. I told you, to the best of my recollection; I don't know whether it was summer or winter.

Q. Was it spring or fall? A. I don't know.

Q. But you don't know positively that you ever did go there, do you? A. To the best of my recollection, I did.

Q. That is the best you can give and the best you will give? A. That is the best I will give.

85 Q. When you settled up for the loan, to whom did you pay the money? A. To Daly.

Q. Why didn't you pay that to Mr. Lynch? A. Why didn't I?

Q. Yes. A. Because I thought I had no right to do it.

Q. Why did you think you had a right to pay him these other times? A. Because I thought he was competent to receive it.

Q. What did you say? A. Because he was a competent agent to receive it.

Q. Competent agent to receive it? A. Competent agent to receive it.

Q. That he was a competent agent to receive it? A. Yes; competent and honest. I thought so or else I wouldn't have given it to him.

MICHAEL D. WHITE,
By J. J. CANTY.

86 Thereupon THOMAS BARRY, a witness of competent age, produced on the part of the complainants and being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. TOBRINER:

Q. What is your name, and where do you live? A. Thomas Barry, 723 Florida avenue.

Q. What business are you engaged in? A. I am engaged in nothing now.

Q. What business were you engaged in before you went out of business? A. Bricklayer. I am a bricklayer by trade.

Q. How old are you? A. About sixty-five years old, thereabouts. I couldn't tell you exactly.

Q. Were you ever a member of the Second Workingmen's Building Association? A. Yes, sir.

Q. From what time up to what time? A. I think I was up to about '97, I think, sir; if I am not mistaken, June, '97.

Q. You have your building association book with you, haven't you? A. That is my building association book, sir (producing book).

Q. Now, look at that book and say if it is June, '98. A. I can't say; whatever it is there, that is right, I judge.

87 Q. This book—the first entry in this book—shows a deposit by you on April 9th, 1884, of five dollars. —. —.

Q. (Continuing:) Was that about the time you went in? A. That was the time, sir.

Q. And the last entry in this book shows a payment by you on June 8th, '98, of \$16.00? A. Yes, sir.

Q. So that you must have been in up to June, 1898? A. Yes, sir.

Q. Mr. Barry, to whom did you make your payments to the build-
6—1172A

ing association? A. I made the majority of the payments to Mr. Lynch.

Q. What is his first name? A. John T. Lynch.

Q. What position did he hold in the building association? A. Secretary of the association.

Q. Was there any other position he held? A. Not that I know of.

Q. Where did you make your payments to him? A. At his house; he didn't live very far away from me.

Q. Did you ever go down to the meeting hall of the association? A. I did, sir, a very few times, but I have sent my money down there by my boy; I went but a very few times to the hall myself.

Q. Where was the hall? A. Corner Eighth and E streets, 88 if I ain't mistaken mightily.

Q. Northwest? A. Yes, sir.

Q. When you went to the hall of the building association whom did you find there? A. I went there on one occasion and I found Mr. Daly there, the treasurer, and I was in a hurry to get out, and I wanted to go somewhere, and I offered the treasurer my money and my book and he said he could not, would not, take it until the secretary came in, and I had to wait a few moments until the secretary came in, and he came in and I handed him my book and he receipted it, and I went about my business.

Q. You say you handed your book to him—to whom did you hand your money and your book on that occasion? A. I first went in there——

Q. To whom did you hand them finally? A. To Mr. Lynch.

Q. What did he do with your money?? A. I handed him my book and my money inside of it, and he receipted for it, and I don't know what he did with the money; I suppose he gave it to Mr. Daly.

Q. On any other occasions when you went to the hall to pay your money, to whom would you hand your money and book? A. I handed it to Mr. Lynch the few times I went there.

Q. Who receipted for the money? A. Mr. Lynch. As I told you before, my boy carried my money there several times.

Q. I hand you this book, which I now offer in evidence; 89 do you know Mr. Lynch's handwriting? A. No, sir; I would not know any one's; I can't write.

NOTE.—The book is filed by the examiner, marked "Exhibit J. J. C. No. 2."

Q. Well, did you ever settle with the association? A. Yes.

Q. When, or about how long ago? A. What does that book show there; '98?

Mr. TOBRINER: Yes.

A. I got settled up with them in September or October, '98; about that time.

Q. Did they; who settled with you? A. I got my account from Mr. Lynch, and I handed it to Mr. Daly, and Mr. Daly gave me a check for my money and I got the money.

Q. That was given to you; and Mr. Daly ordered your deed released? A. I judged he did.

Q. Then the building association owed you money? A. They owed me a trifle at that time.

Q. When you paid your money to Mr. Lynch at his house, did you have your book with you? A. Yes, sir; in all cases, but I didn't pay it to Mr. Lynch all the time, myself; I sent it up there by my wife and daughters.

Q. But I mean, when you did yourself, would he receipt your book himself? A. Yes, sir.

Q. In whose name? A. Well, whenever I paid the money he would put down: Lynch, so much money.

90 Q. And that is what all these payments mean her-? A. Yes.

Q. (Continuing:) Which are signed Lynch? A. Yes, sir.

Cross-examination.

By Mr. LESTER:

Q. Mr. Barry, what relation are you, if any, to John T. Lynch?
A. I am an uncle.

Q. Where is your nephew at the present time? A. I could not tell you; I understand that he is in New York.

Q. When did you last hear from him? A. I have not heard from him at all.

Q. Since when? A. Not since he left here; I have not heard anything direct about him, only hearsay.

Q. When did he leave here? A. I judge now in the neighborhood of two years ago, if I ain't mistaken; pretty close to that time.

Q. Do you know anything about the circumstances of his leaving here? A. I couldn't tell you, really, why he left here.

Q. Don't know why he left the city? A. I don't know, but I suppose he feared he was in trouble.

Q. Why? A. Because he got people's money and didn't turn it into the association.

Q. You heard it said that that was it? A. Yes, sir.

91 Mr. TOBRINER: Objected to as hearsay.

Q. You don't know that to be a fact yourself that he got the money and didn't turn it into the association? A. I know he got my daughter's money, and I asked the treasurer about it, and he said it never reached the association.

Q. Where is your daughter? A. At home.

Q. Did she get her money from the association, that Lynch got?
A. No.

Q. Did she get any back from Lynch? A. No, sir.

Q. Did the other daughter get any? A. That is a matter I don't know.

Q. Did she get any back? A. No, sir; she might—I don't know.

Q. Wasn't there still another daughter who paid money to Mr. Lynch for the association and never got it back?

Mr. TOBRINER: Objected to as not responsive to the direct examination.

A. Yes, sir.

Q. But it never got to the association? A. I understood from Mr. Daly that it never reached the association.

Mr. TOBRINER: Objected to for the same reason.

Q. How far did you live from Lynch's when you were paying money at his house? A. I lived at the corner of Eighth and Florida avenue, and Lynch was on Florida avenue, north of U street.

92 Q. How far? A. One square.

Q. And you would go around and give him money and get him to take it down to the association? A. I would go around and give him my money and he would sign my book as you see it there.

Q. You did that because it was easier than for you to go to the association? A. Yes, sir; I thought it was handier.

Q. You did it to save yourself a trip? A. Yes, sir.

Q. How often did you send your boy? A. I don't know.

Q. Whom else did you send? A. I think I may have sent my daughter several times.

Q. But you were not there more than three or four times? A. Yes, sir.

Q. Every time you were there, you saw Mr. Daly there? A. Yes, sir.

Q. Every time you saw Mr. Daly there when you paid Mr. Lynch, they were sitting at the same table? A. They were sitting at the same table——

Q. Did you start to say anything other than that? A. I said they were sitting at the same table, if I remember, one on one side and one on the other.

Q. And you handed Mr. Lynch your money and book? A. Yes, sir.

93 Q. He receipted your book by putting his name in it? A. Yes, sir.

Q. And handed Mr. Daly the money—Mr. Lynch would put his name in the book and hand Daly the money? A. It is more than likely that he handed it up to him.

Q. Didn't you see him do it? A. It is more than likely he did.

Q. Don't you remember seeing him? A. No; but it is more than likely that he always handed the money to Mr. Daly.

Q. When you were getting Mr. Lynch to transact your business for you and carry your money down to the association, why didn't you get him to settle up for you when you got out? A. Why, he didn't have to settle up for me.

Q. Why not? A. I paid my money in monthly instalments.

Q. When you drew your money out, why didn't you get him to attend to that for you, on final settlement? A. No; I went to Mr. Daly.

Q. Why didn't you get Mr. Lynch to do that for you? A. Because I would not get him; because he was not competent to attend to business; he was drunk all the time.

Q. Well, he was drunk all the time when you were paying him at his house? A. He was not drunk so much at that time.

Q. And then whom did you pay? A. I didn't pay to anybody, because I stopped.

Q. On one occasion Mr. Daly refused to take your money
94 until Mr. Lynch came? A. On one occasion; yes, sir.

Q. Did he say why? A. He didn't say why; he was—I said, Mr. Daly, here is my money; he said, You will have to wait until the secretary comes in; and I handed the secretary my money when he came in.

Q. He didn't say why you would have to wait? A. No, sir.

Q. He didn't say the books were locked up and the secretary had the key? A. I don't remember about it, sir.

Q. Now, you say that every time you went to the hall you handed the money to Lynch himself? A. Yes, sir.

Q. Never to Daly? A. No, sir; I never was there more than three or four times.

Q. Some of those times you may have handed it to Daly? A. I don't think I did, sir.

Q. Then were one or two occasions when you did hand it to Lynch? A. I never recollect handing it to Daly, but won't say, but I might have done so.

Q. If you were there three times, and you handed it to Daly once, of course you handed it to Lynch twice? A. There may have been more than three; there may have been four or five times, because I never thought I would have to come up to testify about this matter.

Q. What relation are you to the plaintiff in this case? A.
95 I am Mrs. Nelligan's brother.

Q. Uncle to the parties to this bill? A. Yes, sir.

Q. Where are they? A. At Atlantic City, N. J.; at least, they was the last I heard of them.

THOMAS BARRY,
By J. J. CANTY.

Thereupon THOMAS DUNN, a witness of competent age produced on the part of the complainants and being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. TOBRINER:

Q. State your name and residence. A. Thomas Dunn; 906 Grant avenue.

Q. What business are you in? A. No business.

Q. Out of business, are you? A. I keep one little cow.

Q. You used to be in the dairy business? A. No; never.

96 Q. How old are you? A. Sixty-eight.

Q. Were you ever a member of the Second Workingmen's Building Association? A. Yes, sir.

Q. About how long since you went out of it—how long ago? A. I think it was about two years ago I got out of it.

Q. How long were you in it? A. Well, I don't recollect that; I think about thirteen or fourteen years; near about that, I believe.

Q. Did you know John T. Lynch? A. Yes, sir.

Q. Did you know Mr. Daly? A. I did.

Q. To whom did you make your payments in the building association? A. I used to make them down to the hall on E street; paid right smart down there.

Q. Who would you make your payments to? A. Both of them sitting down there; I would hand the money to Mr. Lynch and he would hand it to Mr. Daly.

Q. Who would receipt your book? A. Mr. Lynch.

Q. Have you got your book? A. No, sir; it might be home.

Q. I wish you would look for it and see if you can find it. Did you make any payments to Mr. Lynch at his home? A. Yes, sir.

97 Q. Who would receipt for the payments made at the house? A. He would.

Q. In his name? A. Yes, sir.

Q. When you paid the money down at the hall as you have described, in whose name would the book be receipted? A. It may be receipted in Lynch's name.

Mr. LESTER: I object to the question and answer because the book is the best evidence.

Q. Do you think you have got that book, Mr. Dunn? A. I am not certain; I think I have.

Q. How long did this course of proceedings last—your making payments to Lynch at the hall and getting his receipt for them? A. I was paying for ten shares down there right straight along and I omitted some payments and missed two meeting nights. On going down, I said I was late; I thought I would be fined, and I went down and they said that would be all right.

Q. Went down where? A. To Lynch's; a night or two after the meeting night. He said it would be all right; he said I wouldn't be liable to any fine.

Q. Then where did you make your payments after that? A. Sometimes down to the hall; sometimes I would—I would be working then, and then I would be late, and I wouldn't feel like going downtown, and I would make them to Lynch.

98 Q. You say Mr. Daly also receipted your book for you?

A. Sometimes he would when Lynch wouldn't be there at the time. He would take the money sometimes, and sometimes he would tell me to wait till Mr. Lynch came, and Lynch would tell me the same thing; I would have to wait till Daly came.

Q. Tell us whether they receipted for everything you paid them.

A. They did, except ten dollars; they got that down at the hall, and they were both there at the time. Lynch put it in my book and didn't put it in their book, so Mr. Daly said.

Cross-examination.

By Mr. LESTER:

Q. Then you did pay ten dollars in which you didn't get out?

A. Yes, sir.

Q. You say you paid that at the hall? A. Yes, sir.

Q. When? A. I can't say the time.

Q. About how long ago—can you tell? A. It was eight or nine years ago, I believe.

Q. You had that item called to your attention while you were there, at the time you were claiming that ten dollars? A. I was claiming it ever since.

Q. Your attention was called to that item at the time you claimed it was not paid? A. I don't know.

99 Q. Were you not told at the time that no entry was made on the books of the association? A. It was on my book.

Q. Were not you shown each payment that was not turned in to the company? A. I was not.

Q. You were simply told that some time during the time ten dollars was not turned in? A. Yes.

Q. Then you don't know when it was? A. I do not.

Q. And have no idea when? A. I have not.

Q. They never told you when it was? A. They didn't tell me.

Q. How do you say that both Lynch and Daly were present? A. Because I used to pay at regular meetings, every time.

Q. Then on every single occasion when you paid money at the hall both Lynch and Daly were present? Q. Sometimes one would come in sooner than the other.

Q. Did you ever pay one before the other came in? A. Sometimes I would.

Q. Was it on one of these occasions you paid; when Lynch was there and Daly was not? A. I paid Mr. Daly sometimes—sometimes when he was there—he would usually wait till Lynch came in and maybe, again, Daly would not be there. At other times I would pay it to Lynch, and again he would tell me not be in a hurry—to wait till Daly came in.

100 Q. On the particular occasion you paid the ten dollars you say they were both present? A. They were.

Q. How do you know that? A. Because they used to go there regularly at the same time.

Q. And did you say you sometimes paid Lynch when Daly was not there, and sometimes Daly when Lynch was not there? A. Sometimes.

Q. But on this particular occasion of the payment of the ten dollars both were there? A. Yes.

Q. What was that occasion, that you paid that ten dollars that you didn't get back? A. I don't know.

Q. Where was Mr. Lynch sitting when you paid it? A. I expect he was sitting by the table.

Q. You don't remember it, do you? A. I do.

Q. And you remember that Daly was sitting at the same table? A. Sitting at the same table.

Q. Can you remember the time, the month and year? A. I can't tell you the month or year or anything about it; I remember something about it; I remember paying the ten dollars.

101 Q. This particular ten dollars that they didn't pay you back they kept ten dollars of what was your money? A. Yes.

Q. Do you know, then, what payment it was that they kept back? A. I do not.

Q. Then how do you say about the particular payment, if you don't know when it was? A. It was on my book, the month and year.

Q. If you had your book, could you tell which payment it was? A. I could not; somebody could tell it for me.

Q. Nevertheless, although you have payments in there once a month for thirteen or fourteen years, there was one payment in there which you made to Lynch when Daly was present and which you never got back; you remember that that particular payment was made when both were present? A. I didn't say that.

Q. What did you say? A. I didn't say I made a payment to Lynch when Daly was not present.

Q. You say they were both present, but you don't know the payment? A. I did not.

Q. Didn't you have considerable talk about this down before the board of directors—about this ten dollars? A. I did.

Q. And didn't you say right before them that you never
102 made a payment to Lynch at all—always to Daly? A. No, sir.

Q. Didn't they say if you had paid it to Lynch—— A. (Interposing.) How could I say that I didn't make it to Lynch when I did make it to him.

Q. Now, isn't it a fact that there was another occasion when you were present with the board of directors and this question arose? A. I was present some nights.

Q. Where was it? A. Up here on New York avenue between Ninth and Tenth.

Q. And the question of this ten dollars came up? A. Yes.

Q. And they told you it had not been received by Mr. Daly? A. He told me so himself.

Q. And they were all standing there? A. Yes, sir.

Q. That is the only occasion on which this question did arise between you and the directors, isn't it? A. Yes, sir.

Q. On that occasion didn't you say that you had paid all your money to Daly, including this ten dollars? A. I couldn't say that.

Q. (Continuing:) And had not paid it to Lynch? A. I couldn't say that, because I used to pay Mr. Lynch up to his house.

Q. Didn't you say that this ten dollars you were claiming was paid by you to Daly and not to Lynch? A. No, sir; I didn't.

103 Q. That is as true as all the rest of your testimony? A. Yes, sir.

Q. Mr. Beckler, Mr. Ward, and Mr. Lanagon were present? A. Yes, sir.

Q. And heard the conversation? A. Yes, sir.

Q. And you didn't make such a statement as that; that you had paid this ten dollars, which they refused to give you, to Mr. Daly and not to Mr. Lynch? A. Mr. Daly said I would get the ten dollars when I got the interest; I would be sure to get it when I got the interest. The first interest I got I asked them about the ten dollars, and they said—he said they couldn't give it to me now.

Q. I am talking about the occasion when you saw the board of directors there, and you say they said that Mr. Daly never got the ten dollars. A. It was not mentioned the night I was there.

Q. What did they say? A. Well, one item I thought was the ten dollars, and they said—Mr. Daly said—I wouldn't get it—if he could—they said they would let the board of directors take a vote on it. They took a vote on it. Four or five of them were there, and there were two for me and three against me.

Q. And were you present? A. Yes, sir.

Q. And on that occasion you didn't say that you had paid this ten dollars to Daly? A. I did not.

104 Q. How often did you pay money to Lynch at his house? A. You are too hard for me; I paid him a right smart at his house.

Q. Why did you do that? A. Because I thought it was all right; it was handier for me to pay it there than at the hall.

Q. How far was his house from you? A. Not far.

Q. How far? A. A couple of squares.

Q. And to save a trip downtown you gave him the money? A. Yes; it was all right—what I gave him.

Q. Are you any relation of his? A. Yes.

Q. What is your relationship? A. His father and me are first cousins.

Q. You had known him all his life? A. Yes—not exactly all his life—

Q. Fifteen or twenty years? A. Oh, yes; thirty years.

Q. Where is he now? A. I could not tell you.

Redirect examination.

By Mr. TOBRINER:

Q. After you took your payments down to the building association hall and found out that Lynch was receipting your book down there, then you began to make your payments out to his house, didn't you?

105 Mr. LESTER: I object to that as leading and as not being proper redirect examination.

A. I used to pay the ten shares down there regularly myself every meeting, and then that boy of mine did. I missed the meeting night and I didn't attend to it that night, and I told Lynch about it, and he said it was all right, and I asked him if it would be a fine because I was not there, and he said no; it was not a case like that; there ought not to be a fine; and once in a while after that I would go down and pay it. Sometimes I would go down to the hall after that, and if I didn't feel like going down to the city I would give it to Lynch.

Recross-examination.

By Mr. LESTER:

Q. Doesn't that apply to the ten dollars which was never turned in to the association? A. I don't know; I didn't get it.

THOMAS DUNN,
By J. J. CANTY.

106 Whereupon MARY LYNCH, a witness of competent age produced on the part of the complainants and being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. TOBRINER:

Q. Are you related to John T. Lynch? A. No, sir.

Q. Where do you live? A. 1018 Vermont avenue.

Q. Were you a member of the Second Workingmen's Building Association? A. Yes.

Q. Is this book which I have, in the name of Mary Lynch, your book? A. Yes, sir.

Q. This book begins in July, 1890, and the last entry in October, 1897, so that you were a member during that time? A. Yes.

Q. Who gave you that book? A. John Lynch.

Q. And to whom did you make your payments in this book? A. John Lynch.

Q. Where? A. At his house.

Q. Did you ever attend a meeting of the association? A. No.

Q. Did you know where it met? A. On E street. A friend
107 of mine took my money there very often. He is dead now.

Q. Who was that? A. John McMurten.

Q. When the book was returned did you send your book down with him? A. Yes, sir.

Q. When it was returned to you did you have credit for that payment? A. Yes, sir.

Q. Who took the money when payments were made at Mr. Lynch's house? A. Well, his wife took it upstairs or his sister took it upstairs. He had an office, I think, upstairs.

Q. Would you get your book back? A. Yes.

Q. When? A. I would get it right away, or very often I would leave it there.

Q. Do you know his handwriting? A. I have seen it on several occasions.

Q. Do you know whether all these entries under the name of Lynch are in his handwriting? A. I think so.

Q. Do you know how much you deposited in the building association all together? A. About up to five hundred dollars.

Q. Did you ever get any of it back again? A. I drew out a hundred dollars in April, 1896, and he gave me ninety-six in April, 1897. I asked for a hundred and he gave me ninety-six.

108 Q. Well, after that did you ever get any money from the building association? A. No.

Q. Do you know Mr. Daly? A. Yes; to see him.

Q. When did you first meet him personally? A. I think it was in September, '98.

Q. Where? A. At his house.

Q. For what purpose and under what circumstances? A. I was in New York at the time, and some of my friends told me when I came back that Mr. Daly had made a remark that I had only a few dollars——

Q. (Interposing.) Where? A. In the building association. So I went to see him about it.

Q. What took place? A. Well, he told me I had drawn out three checks from there; the last one was two hundred and twenty-two dollars.

Q. You had drawn out three checks? A. He showed them to me; the last one was for two hundred and twenty-two dollars, but I didn't get that.

Q. Did he tell you how much there was in your balance in the association? A. He told me then there was very little.

Q. Did you see him afterwards again? A. Yes; he came up to me with a check; I think it was seventy-two dollars.

Q. What was that check for? A. He said it was the balance in the building association for me, after what John Lynch had drawn out.

109 Q. To your credit? A. Yes; I think it was seventy-two dollars.

Q. So that you drew out first how much? A. One hundred dollars.

Q. One hundred dollars? A. Yes, sir.

Q. And then ninety-six dollars? A. Yes, sir.

Q. And then a check had been made out to your order for how much? A. Two hundred and twenty-two dollars, I think.

Q. And then Mr. Daly told you there was a balance to your credit of how much? A. I think it is seventy-two dollars; I am not positive.

Q. Did you ever get that seventy-two dollars? A. No.

Q. Did you ever tell Mr. Daly, or did Mr. Daly ask you, how you had made your payments to the building association? A. No.

Q. Did he look on his books? A. Yes, sir.

Q. Now, about this check of two hundred and twenty-two dollars. Did you ever get a check for two hundred and twenty-two dollars from the building association? A. No.

Q. The only thing you got from them was a hundred and ninety-six dollars? A. Yes, sir.

Q. He did offer you a check for seventy-two dollars? A. 110 Yes, sir; Mr. Daly did.

Q. You have seen that check for two hundred and twenty-two dollars, haven't you? A. Yes, sir.

Q. To whose order is it drawn? A. Mine, I think.

Q. To your order? A. Yes.

— Did you indorse it or honor it in any way? A. No.

Q. Your name does appear on the back of it? A. Yes; but I didn't put it there—I didn't sign it—only Mr. Daly showed it to me almost a year after.

Mr. TOBRINER: I offer that check in evidence and also her book and request that copy of check be made and the check returned to the district attorney's office. This check has been made the subject of an indictment for forgery against John T. Lynch.

NOTE.—Book filed by examiner, marked "Complainants' Exhibit J. J. C. No. 3."

NOTE.—And the said check, with the endorsements thereon, is here copied into the record and is in words and figures as follows, to wit:

"No. #.

WASHINGTON, D. C., Nov. 11th, 1897.

"The National Bank of Washington, of Washington, D. C.,

"Pay to the order of Mary Lynch two hundred & twenty-two & 1⁵⁰/₁₀₀ dollars.

"\$222.50.

T. D. DALY,

"Treas. 2nd Workingmen's Bldg. Ass'n.

"Indorsed: Mary Lynch. John T. Lynch. Indorsing stamp, Citizens' Nat'l bank. J. J. Canty, examiner."

111 Cross-examination.

By Mr. LESTER:

Q. Why didn't you receive the seventy-two dollars? A. Mr. Tobriner had told me not to receive any money.

Q. And that is the reason you didn't? A. He told me before, Mr. Tobriner had; I thought it was wrong, and, as long as I had the case in Mr. Tobriner's hands, I did as he said.

Q. Did you receive one hundred dollars and ninety-six dollars? A. Yes, sir.

Q. Through whom did you receive it? A. John Lynch.

Q. You requested him to get the money for you and he got it? A. Yes.

Q. And gave it to you? A. To my aunt for me.

Q. And you received it? A. I received it.

Q. You requested him to get the ninety-six dollars? A. Yes.

Q. He got it? A. Yes.

Q. And gave it to whom? A. My aunt.

Q. You received it? A. Yes.

Q. You requested him to get the two hundred and twenty-two dollars? A. No; I notified them in November that I wanted all the money there that was mine, and he said he would have
112 it in a few days.

Q. Then he got the check and kept it? A. Yes, sir.

Q. Did he write the name on the back of it? A. I don't think it is his writing; I know it is not.

Q. Do you know whose handwriting it is? A. I do not.

Q. Are there any other signatures on the back of it? A. I do not know now; I am not positive.

Q. Do you know his signature when you see it? A. I think I do; I have seen his handwriting in my book.

Q. You always paid the money at his house, either to his wife—you say his wife usually received the money and took it upstairs? A. Yes; and his sister-in-law.

Q. Did you ever give it to him in person? A. I think I gave it to him a few times.

Q. How many times? A. Just about two.

Q. All these other times you paid it to his wife or his sister-in-law? A. Well, it was sent to the hall very often.

Q. Except when it was sent there? A. Yes, sir.

Q. Then you got the book back from him? A. Yes, sir.

Q. You have the same name Mr. Lynch has, but you are
113 no relation? A. Yes; no relation.

Q. Possibly some connection by marriage? A. No; no relation.

Q. Are you any relation to John T. Lynch's wife? A. No; she is just a friend of mine.

Q. How long have you known Mr. Lynch? A. About fifteen years.

Q. How did you happen to go into the association? A. Well, two or three friends of mine that commenced to pay into it; my aunt, for a while, was a member; she thought it was a very good way to save money, so I commenced.

Q. Whom did you go to see about it? A. John Lynch.

Q. And he engineered the whole thing right through? A. Yes.

Q. Attended to everything for you? A. Everything.

Q. Obtained the book for you and received the money for you, and finally drew out your money and spent it for you—that is right? A. Yes.

Q. You had told him you wanted this money—did you give him written authority to draw this one hundred dollars out? A. Yes, sir.

Q. And the same as to the ninety-six dollars? A. Yes, sir.

Q. And to draw the other out? A. I told him I wanted everything that was there, due to me.

114 Q. You also authorized him in writing? A. Yes, sir; the first time I met him at his house and the second time I wrote him a note.

Q. And the third time? A. I happened to meet him on the street.

Q. Didn't you give him written authority on the association to withdraw that money? A. Yes, sir; to John Lynch only.

Q. Authorizing him to get the money for you? A. Yes, sir.

Q. You don't know where he is now? A. No.

Q. When was the last time you heard from him? A. Two years ago last Friday, I think, he skipped.

Q. What do you mean by "skipped"? A. He left the city.

Q. Did he leave the city because of the forgery of this check? A. I think so.

Redirect examination.

By Mr. TOBRINER:

Q. Mr. Lester asked you if you authorized him in writing to get this two hundred and twenty-two dollars for you; what do you mean? A. I couldn't go to his house, so I wrote him a few lines that he should let me have the money as soon as possible.

Q. But you didn't give any formal writing to the building association? A. No.

115 Recross-examination.

By Mr. LESTER:

Q. Didn't you give him something in writing which you expected him to file with the building association, which he did file with the association, upon which he withdrew that money; I mean the two hundred and twenty-two dollars, when you wanted to close up? A. I just wrote him a few lines, telling him that I wanted my money as soon as possible, and asked him to get it for me; that is all.

By Mr. TOBRINER:

Q. When this check for two hundred and twenty-two dollars was shown you, with your endorsement signed on it, which turned out to be a forgery, what did you do about it?

Mr. LESTER: Objected to as immaterial.

A. I told Mr. Daly at the time that I didn't know anything about it; that I didn't receive the money, and then I came to you about it.

Q. Did you appear before the grand jury? A. Yes, sir.

MARY LYNCH,
By J. J. CANTY.

116 Whereupon THOMAS A. CREAMER, a witness of competent age produced on the part of the complainants and being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. TOBRINER:

Q. What is your name and where do you reside? A. Thomas A. Creamer, Seat Pleasant, Maryland.

Q. What is your business? A. Plumbing and gas-fitting.

Q. Were you ever a member of the Second Workingmen's Building Association? A. Yes, sir.

Q. Have you your books with you? A. Yes, sir.

Q. This book shows that you made your first payment on May tenth, '93, and your last on the 18th of June, '94; was it during that time that you were a member of the association? A. Yes, sir.

Q. To whom did you make your payments? A. Mr. Lynch.

Q. John T. Lynch? A. Yes, sir.

Q. Where? A. Ninth and U streets, at his house, his residence.

Q. Did you ever make any at the hall of the association? A. No, sir.

117 Q. Who gave you this book? A. Mr. Lynch.

Q. Where? A. At his house, his residence.

Q. Did you make the payments in person? A. Yes, sir.

Q. Do you know whose handwriting these entries are in? A. Mr. Lynch's.

Q. All of them? A. Yes, sir.

Q. After you made your last payment in June, '94, did you draw out your money from the building association? A. Yes, sir.

Q. Did you ever make any payment to Mr. Daly in person? A. No, sir.

Q. Who paid you when you drew out? A. Mr. Daly.

Q. Where? A. On La. avenue near Ninth, at his office or place of business; don't know what you call it.

Q. How did you happen to go there? A. By order of Mr. Lynch.

Q. Did Mr. Daly say anything to you about drawing out your money? A. Only to advise me about being a young fellow, he would like to see me keep on in the company, being a young man, you know—just gave me the best of advice.

Mr. TOBRINER: I offer in evidence the book referred to by this witness.

118 NOTE.—And the same is filed by the examiner and marked "Complainants' Exhibit J. J. C. No. 4."

Cross examination.

By Mr. LESTER:

Q. Mr. Creamer, you never did attend the meetings of the association? A. No, sir.

Q. Who induced you to go into -his in the first place? A. A young lady—Miss Barry.

Q. And she suggested that you see Mr. Lynch? A. No, sir; I just went in because the rest of them—by knowing other people.

Q. You knew him before? A. Yes, sir.

Q. How long had you known him? A. I guess I had known him all my life; I was raised here.

Q. You knew he was secretary? A. I didn't know until I went in there.

Q. You knew it when you did go in? A. Yes, sir.

Q. And you made all arrangements with him and gave him your money and application? A. I gave him the money and he gave me a book.

Q. Didn't you make an application in the first place, in writing? A. No, sir.

Q. Are you any relation of his? A. No, sir.

Q. Just an old friend? A. It is just by living up there so many years that I knew him.

119 Q. Where is he now? A. I couldn't tell you.

Q. You got back all the money you put in? A. Yes, sir.

Q. When you wanted to get the money back, you say he gave you an order on Mr. Daly. What do you mean by that? A. He told me to go down to Mr. Daly and get my money. I went to him and asked *me* for my money, and he told me he would give it to me in a few days, and so he stopped me one evening and told me to go to Mr. Daly's. I don't know whether it was a letter or not he gave me.

Q. Didn't you see what he gave you? A. I don't remember; it has been so long.

Q. Didn't he give a statement showing, in dollars and cents, how much was due, and tell you to go to the treasurer and get your money? A. He may have done so. I don't remember; it may have been that.

Q. You never saw Mr. Daly until you brought that order and check, did you? A. No, sir; I never saw him before.

THOMAS A. CREAMER,
By J. J. CANTY.

120 JOHN MANGAN, a witness of competent age produced on the part of the complainants and being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. TOBRINER:

Q. What is your name and where do you live? A. John Mangan 2028 Eighth street northwest.

Q. What business are you in? A. Horseshoeing.

Q. How long have you been in that business? A. Since '77.

Q. Where is your place of business? A. It used to be on Four-

teenth between Rhode Island avenue and N; now it is in the rear of 1340 Rhode Island avenue.

121 Q. Were you ever a member of the Second Workingmen's Building Association? A. Yes, sir; I was.

Q. About when did you become a member? A. I cannot tell that; I will have to look at the book. (Witness examines book.) In '89.

Q. You looked at a book before you answered the last question, that was your building association book. I ask you to let me look at that book. The book you looked at is your building association book, isn't it? A. Now, understand me distinctly; that is stock that I taken at the time.

Q. And you paid in on it? A. Yes.

Q. You paid in on it up to what time? A. I don't know unless I look at the book; the book will tell. (Witness looks at book and continues :) April 10th.

Q. What year? A. Well, it is marked here, as well as I can see, '94, I think it is. I won't be positive, but I think it is '94, though.

Q. You have another book here? A. That is the book I borrowed on; this book has been straightened up; so has that; they don't owe me a cent.

Q. This book begins the twenty-first of February, '95? A. That is the money I borrowed; seven hundred and some odd dollars.

122 Q. And you paid back up to—— A. (Interposing.) I paid it all up; they haven't got it down there; I paid it all up.

Q. (Continuing :) About '99? A. I couldn't tell you about this book, but, as a fellow says, I have got it all at home, because I have got my bill of release. I got it from Mike Colbert. He had my case and straightened it all up. They paid me every dollar they owed me.

Q. When you began in '92 to deposit money with the building association to whom would you make your payments? A. Mr. John Lynch.

Q. Would he receipt for them? A. That is his receipt. That is the only receipt I have got—his book.

A. (Cont. :) That name appearing on the end of that (indicating line on which entry in book is made), that is his name. I don't know any other name but John Lynch. That is all I can tell you about it. John Lynch signed his name, and I can't swear to anything but that it is his name. The same signature goes all the way through, doesn't it? I don't know. There is no different signature; there is no difference in the handwriting there. It appears to be all the same.

Q. And on this book, beginning in February, '95, you made the payments to Lynch in the same way? A. I made the payments to Lynch in the same way until he ceased to be secretary. You can see when he ceased, because there is a different signature there.

Q. Where would Lynch be when you made these pay-
123 ments? A. He would be at home.

Q. At his house? A. Yes, sir.

Stipulation.—It is stipulated by the parties hereto, through their respective counsel, that the book, as presented by the witness, for five shares in the fifth series, first payment May 8th, 1889, with the Second Workingmen's Building Association, is in form in the printed matter the same as "Complainants' Exhibit J. J. C. No. 2" presented by Thomas Barry, and that the entries therein may be copied into the record, to take the place of the original, the witness being unwilling that the book shall be kept away from him until the final hearing of the case, and insisting that it shall be returned to him after having been copied.

* * * * *

Stipulation.—It is further stipulated and agreed by the parties hereto, through their respective counsel, that the book presented by the witness with payments beginning February 21st, 1895, for four shares, tenth series, is in its printed matter exactly similar to Plaintiffs' Exhibit No. 4 offered by Thomas A. Creamer, and it is further agreed that the examiner shall copy the entries therein into the record to take the place of the original, for the same reason as above.

* * * * *

By Mr. TOBRINER:

Q. From whom did you get these books originally, Mr.
124 Mangan? A. Mr. Lynch.

Q. Did you ever go to the meeting-room of the association to pay any of your dues? A. I did, sir. It was after Mr. Lynch ceased to be secretary.

Q. Did you go there to pay your dues before he ceased to be secretary? A. No.

Q. During all these years, up to the time that Mr. Lynch ceased to be secretary, you paid your dues to him at his house? A. While he was secretary.

Q. Up to the time he ceased to be? A. Yes, sir.

Q. That is right, isn't it; up to the time he ceased to be secretary you paid your dues at his house? A. I did.

Q. And he receipted? A. He receipted. I didn't see him receipt. He taken his book and carried it from the front door and receipted it and handed it back to me. I didn't see him receipt it. It is his signature—the same signature all the way through.

• Cross-examination.

By — LESTER:

Q. How long have you known Secretary Lynch? A. For years.

Q. How many? A. Well, I will put it at fifteen years.

Q. Ever since he was a boy? A. No; he was a man then.
125 He is pretty near as old as I am. I am no boy.

Q. How far did Mr. Lynch live from you? A. I live on

Eighth street and Mr. Lynch lived on Ninth street extended ; you may take it to be Florida avenue ; I always called it Ninth.

Q. Just a couple of squares from you ? A. Only a square. I live on Eighth and he lived on Florida avenue ; I believe properly it is Florida avenue.

Q. Did Mr. Lynch induce you to go into the association in the first place ? A. He spoke to me about it ; yes, sir.

Q. Nobody else ? A. No, sir.

Q. You went into it as you have stated ? A. Yes, sir.

Q. Why didn't you go to the meeting and pay your dues ? A. I didn't know anything about the association.

Q. Didn't know anything about it ? A. No, sir ; don't know anything about it today.

Q. You knew they held meetings downtown ? A. Well, I was not interested about it.

Q. You knew they held meetings downtown ? A. I supposed they did.

Q. You knew it, didn't you ? A. I suppose I did.

Q. And the reason that you went to Lynch was that he was nearer to you ? A. That is it exactly.

Q. And you gave him the money to take to the building association for you to save you the trip ; that is the real reason, isn't it ? A. Yes, sir.

Q. Did you always carry the money, yourself, to Lynch ? A. No, sir.

Q. Who did ? A. Sometimes my boy.

Q. How many times did you carry it ? A. Pretty much all the time.

Q. How many times did your boy carry it ? A. Twice, to my knowledge.

Q. But you carried it most of the time ? A. Yes, sir.

Q. You borrowed some money ? A. Yes, sir.

Q. Who gave you the money you borrowed ? A. Mr. Daly.

Q. Where did you get that ? A. Citizens' National bank, I think ; to the best of my knowledge, is it not, Mr. Daly (addressing Mr. T. D. Daly) ?

Mr. DALY : Bank of Washington.

WITNESS : Bank of Washington.

Q. You have paid that money back you borrowed ? A. I got a receipt for it, anyway.

Q. Did you pay it back ? A. Yes.

Q. To whom ? A. I paid it—the biggest part of it—to Mr. Lynch, and the balance, when the association was—I saw Mr. Daly and he informed me that it had to be wound up, and I went to work and gave my case to Mike Colbert, and he paid it.

Q. You don't know to whom he paid it ? A. No ; I have got Mr. Daly's signature for it.

Q. Do you know to whom Mr. Colbert paid it, Lynch or Daly ? A. Lynch was not secretary any more.

Q. You mean the money which appears on that book ? A. That is all I paid to Lynch.

Q. But when you paid the lump sum Lynch was gone? A. That is it exactly.

Q. Who gave you this bill of release, as you call it, Mr. Colbert or Mr. Daly? A. I suppose Mr. Daly and the association gave it.

Q. Who gave it to you? A. Mr. Colbert sent it to the city hall and had it recorded, and notified me to get my deed of release.

Q. He got it for you, you mean? A. I got the deed of release myself, after he paid for it.

Q. Who received it from the association? A. Mr. Colbert, Mr. Hamilton's partner.

JOHN MANGAN,
By J. J. CANTY.

128 Thereupon MARY A. J. POWER, a witness of competent age produced on the part of the complainants and being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. TOBRINER:

Q. What is your name and where do you live? A. Mary A. J. Power; 1115 N street northwest.

Q. About how long have you lived there? A. About fourteen years, at 1115.

Q. Miss Power, were you ever a member of the Second Workmen's Building Association? A. I was.

Q. Did you ever borrow any money from that association? A. I did.

Q. When did you first become a member of that association? A. (Witness consults a book.) My book states that I became a member July 9th, 1884.

Q. At that time did you borrow any money from the association, or afterwards? A. Afterwards.

Q. You first became a depositor with the association? A. Yes, sir.

Q. Can you tell about what time it was you borrowed money from the association? A. I cannot; I think it was in October, '87 or '88—'88, October, '88.

Q. And how much did you borrow from the association, about—I want the round figures? A. It was, I think, fifteen hundred dollars, or something in that neighborhood.

Q. Have you your association book—your deposit book? A. I have.

Q. When you first began depositing with the association, from whom did you get this book? A. Mr. Daly.

Q. And to whom did you make your payments? A. In the beginning to Mr. Daly, and later to Mr. Lynch.

Q. These entries here, T. D. D., are Mr. Daly's entries? A. Yes, sir.

tom of it, or did it simply terminate with the amount you owed the association? A. I cannot state about that——

Mr. LESTER (interposing): I object to the question as leading.

A. (Continuing:) Mr. Lynch sent this to me by mail; book and all, bill of release, recording—it is all there.

Q. In whose handwriting is this statement of March 8th, 1894?

Mr. LESTER: Question objected to on the ground that it has not been shown that the witness knows the handwriting.

A. I suppose it is Mr. Lynch's.

Mr. LESTER: Objected to; supposition is not evidence.

132 Q. According to this statement, you owed the building association six hundred and sixty dollars and sixty cents; did you pay that amount? A. Yes, sir.

Q. To whom? A. John T. Lynch, and he, in turn, sent me the bill of release and made a regular settlement of it with me, signed by the trustees and all persons connected with it.

Q. Do you know Mr. Lynch's signature? A. Yes, sir.

Q. Can you state whether these are his signatures to these papers? A. That is my belief; I am not an expert on handwriting, but, as far as I can judge, I think it is.

Q. They were sent to you from him? A. Yes, sir.

Mr. TOBRINER: I am going to offer in evidence this statement, dated March 8th, 1894. Miss Power is very anxious to get these papers back, and I am going to ask that the stipulation be made that copies of them be offered on the record, and if it be necessary, and the court desires to inspect the paper, Miss Power will agree to let us have it for that purpose, so the court can look at the original paper itself.

Stipulated by and between counsel for the respective parties that the statement referred to by the witness and offered in evidence by Mr. Tobriner may be copied into the record, the original to be produced for the court's inspection at the hearing if desired by the court.

J. J. CANTY, *Examiner*.

133 NOTE.—And the said statement is here copied into the record by the examiner and is in words and figures as follows, to wit:

WASHINGTON, D. C., *March 8, '94.*

Miss Mary A. J. Power in account with Second Workingmen's Building Association.

DR.

To advance on 6 shares, Dec., 1888.....	\$1,146
account of advance due.....	6
	<hr/>
	\$1,152.00

Q. And the moneys that are so marked by him were paid to him?
A. Yes, sir.

Q. According to this book you made your payments to Mr. Daly until about the thirteenth of July; is not that so? A. Yes; with the exception of two payments in the meantime that were made to Mr. Lynch; I could not give the reason, but I see that two payments were made to Mr. Lynch.

Q. May 9th and June 13th, '88; is that correct? A. Yes.

130 Q. From July 13th, '92, to March 22, '94, you made your payments to Mr. Lynch? A. Yes.

Q. And he receipted for them, as appears in this book. In whose handwriting is this, "March 22nd, '94, paid in full, John T. Lynch, secretary"? A. Mr. Lynch's.

Q. In March, '94, you still owed the building association on the loan which they made to you? A. Yes.

Q. At that time did you settle up with them? A. Yes; in March I settled up with them; here is my bill of release.

Mr. TOBRINER: I want to offer in evidence this book (referring to book produced by this witness) with the following stipulation:

Stipulation.—It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the book presented by the witness Mary A. J. Power contains the same printed matter as the book of Mary Bresnaham, heretofore offered in evidence as "Complainants' Exhibit J. J. C. No. 1," and that the entries therein may be copied by the examiner into the record, to take the place of the original, the witness being unwilling that the book shall be kept away from her until the final hearing of the case, and insisting that it shall be returned to her after being copied.

* * * * *

J. J. CANTY,
Examiner in Chancery.

March 22, 1894.

Paid in full.

JOHN T. LYNCH, *Sec.*

131 By Mr. TOBRINER:

Q. Before you settled up, did you receive a statement from the building association as to the amount of your indebtedness? A. I did.

Q. Will you look at this paper, dated March 8th, 1894, and see if this is the statement? A. The first statement that I received was on March 3rd; that is signed by Mr. Lynch and Mr. Daly both, showing how much I owed on it here, March, '92 (indicating). This is March 8th, 1894 (indicating paper).

Q. So that (indicating paper) is the statement which you received as the amount of your indebtedness; from whom did you receive this statement? A. Mr. John T. Lynch.

Q. At that time, on March 8th, did it have that receipt at the bot-

CR.

By cash paid on stock.....	\$420
interest at 6%.....	71.40
	<hr/>
	491.40

Balance due association..... \$660.60

Attest:

JOHN T. LYNCH, *Sec.*

\$660.60.

Received of Mary A. J. Power six hundred and sixty $1\frac{60}{100}$ dollars in full of all demands.

JOHN T. LYNCH,
Secretary 2nd Workingmen's Bldg. Ass'n.

J. J. CANTY, *Examiner.*

By Mr. TOBRINER:

134 Q. Miss Power, where was Mr. Lynch when you paid him the six hundred and sixty dollars and sixty cents? A. At his residence.

Q. Did he return to you any papers at that time? A. I cannot remember.

Q. Did you say that subsequently he did send you some papers? A. Yes; the papers you have in your hand. After recording it he attended to all that.

Q. Do you remember whether he returned to you the bond which you had signed when you obtained the money from the building association?

Mr. LESTER: Objected to as leading; the witness has said nothing about a bond.

A. I do not remember.

Q. Where were these payments made which you made to Mr. Daly while you were paying dues to the building association?

A. At Mr. Daly's residence.

Q. And the payments for which Mr. Lynch receipted in your book—where were they made? A. At Mr. Lynch's residence.

Cross-examination.

By Mr. LESTER:

Q. Miss Power, on May 9th, 1888, and on June 13th, 1888, under these dates the word "Lynch" is signed in this book. You say you paid Lynch the money on these occasions? A. I must have, but I don't recollect it. I don't recall, but I always went to Mr. Daly's house, and I cannot give any explanation for Mr. Lynch's

135 signature unless Mr. Daly was out of town; but if he had been home and well, I would have gone to his residence.

Q. You say that because you see the signature? A. Yes.

Q. That is the only reason you think so, isn't it? A. Yes, sir; that is all.

Q. You have no independent recollection? A. It is too many years back.

Q. You may have paid it to Mr. Daly and Lynch receipted it? A. That may have been the case.

Q. Then, on July 13th, 1892, it seems you commenced to pay Lynch? A. Yes.

Q. Why did you do that? A. Because Mr. Daly ceased speaking to me.

Q. Oh, he did? A. Yes.

Q. Why did you pay Mr. Daly? A. Because it was very convenient, and I thought Mr. Daly was doing me a favor in paying it for me; the meetings were held in the evenings, I think the first Wednesday in the month, if I am not mistaken, and I felt that he was doing me a favor in accepting the money at his residence and paying the dues for me.

Q. After that you thought Mr. Lynch was doing you a favor to accept the money? A. Yes; I was afraid to take it to Mr. Daly, for fear he would not take it for me.

136 Q. After you commenced giving the money to Mr. Lynch, you considered he was doing you a favor to take the money, didn't you? A. Yes.

Q. And you did it because it was more convenient to take the money there? A. Yes; I felt Mr. Daly and Mr. Lynch had both done me a favor in taking it for me——

Q. And you wanted them to take the money there for you? A. Yes.

Q. That is what you expected them to do? A. Yes.

Q. You asked them to do it? A. Yes, sir.

Q. Referring to this payment of six hundred and sixty dollars and sixty cents, which appears on the bottom of the statement, do you remember the occasion on which you paid this to Mr. Lynch? A. No; I do not.

Q. When you say you paid it to Mr. Lynch you say so because you see his receipt for it? A. I paid it at his residence, I remember, in his dining-room.

Q. Then you do remember the occasion? A. Yes; I don't remember the day, but I remember paying it at his house. I went to his house and asked him to give me a statement as to how much I was indebted, as I wanted to settle.

Q. That statement he didn't give you on the same day that you asked for it? A. No.

137 Q. Some time after? A. Yes.

Q. Do you remember how you got the statement? A. I do not remember.

Q. Then you took the statement afterwards and paid the money and got the receipt? A. Yes.

Q. Do you remember carrying the money to Mr. Lynch's house and paying him or did you get some one else to do it for you? A. I don't remember.

Q. Do you remember whether it was cash or a check? A. I think it was cash; I am not positive; it was so many years ago. It is seven years last month, and I am a very busy person myself.

Q. And you don't remember that you carried the money there and paid it? A. I think I remember paying it.

Q. But you don't remember carrying the money to Mr. Lynch's house and paying it? A. I think I paid it to him in his dining-room.

Q. Carried the money there yourself? A. I think so.

Q. Was there some attorney engaged to represent you in this matter? A. I think not; an attorney represented my mother.

Q. Mr. Milton Barnard? A. He represented my mother, but I think he didn't represent me.

138 Q. Didn't he pay this money for you? A. I don't remember; he settled my mother's affairs—Job Barnard—he settled my mother's affairs, but I don't remember of him settling up mine.

Q. Did the present Judge Barnard have anything to do with your affairs? A. I don't remember that he did.

Q. When I said Milton Barnard awhile ago I meant Job Barnard—you understood it was Job Barnard? A. Yes; I did.

Q. Can you say that Judge Barnard didn't pay the six hundred and sixty dollars for you? A. No; I can't say it.

Q. You wouldn't swear that he didn't pay it? A. No.

Q. Isn't it a fact that the present Justice Barnard paid this six hundred and sixty dollars and sixty cents for you, and that you got this receipt afterwards, through the mail, and that you didn't pay this money yourself at Lynch's residence? A. I don't remember; it was so many years ago. I was glad to pay it and get rid of it.

Q. You don't recollect of going to Lynch's house and paying this money at all, do you? A. I remember of going to Lynch's house.

Q. But do you remember paying the six hundred and sixty dollars there? A. It seems to me I did; I may be mistaken; I am not positive, but it seems to me I did.

Q. But you can't say positively you did? A. I can't; I was anxious to pay it and get rid of it.

139 Q. You can't say you paid it yourself? A. Oh, yes.

Q. But you can't say that Justice Barnard didn't pay it?

Mr. TOBRINER: She testified that she paid it to Mr. Lynch in the dining-room.

A. Question not answered.

Q. You can't say now that Justice Barnard didn't pay it for you? A. To the best of my belief, I paid it to Mr. Lynch. I know Mr. Barnard settled up some matters for my mother, but if he settled any for me I have forgotten it. I think my mother settled up after me.

Q. You won't be willing to swear that Justice Barnard didn't pay this money for you? A. No.

Q. Do you know how you received this statement after the receipt

was put on it—whether by mail? A. I think it was sent to the house—mailed to the house; I think so.

Q. If you paid this money yourself and Justice Barnard didn't pay it, wouldn't you have gotten this receipt from Mr. Lynch at that time, don't you think? Doesn't that refresh your recollection? If you received this statement without receipt and took it to Mr. Lynch's house and paid it, as you thought you did, wouldn't you have received the receipt then and there from Mr. Lynch? A. I don't think so.

Q. Why? A. Because when I asked him for my amount he had to refer, no doubt, to his books, to give me the amount, and
140 he couldn't give me a receipt until he knew exactly how much I owed him.

Q. But he didn't give you the receipt at the time he gave you the statement? A. I don't remember.

Q. I believe that you said he mailed you the statement in the first place. A. To the best of my belief, these papers were all mailed to me in this envelope; to the best of my belief.

Q. But you must have gotten this statement before you would know how much money to take—doesn't that refresh your recollection? A. No.

Q. And you still think you received the statement just as it is, with the receipt on it, already signed and receipted, at one and the same time? A. I think so because several papers were mailed to me together with the book, but which papers they were I cannot state, as I have been out of the association seven years, and I took all of my building association papers and put them together in this envelope which Mr. Lynch sent me, and I didn't take the date of each.

Q. How much money did you take to Mr. Lynch's house to pay? A. I suppose I took the amount I owed. I went to Mr. Lynch's house and requested to know the amount of my indebtedness, and, as far as I can remember, I went to his house to know my indebtedness, as far as I can remember; he told me the amount and I paid it in full.

Q. But didn't you say a little while ago that he didn't tell you the amount then—that he sent you a statement afterwards?
141 A. That is how I got the amount—by the statement. He had to refer to his books.

Q. Then he sent you the statement afterwards? A. That is the best of my belief.

Q. When he sent you this statement and before you had paid the money it didn't have this receipt on it, did it? A. I don't remember about it.

Q. You do remember now, however, that he sent you this statement after you asked for it, and after that you got the statement, you paid the money; is that correct? A. I cannot remember; all I remember is that these papers were sent to me.

Q. Where did you get this money, from the bank, or did you have it in the house? A. It never passed through my hands.

Q. But you paid six hundred and sixty dollars? A. Yes; that I passed through my hands; I think so.

Q. You are not sure? A. I understood you to say the money in the beginning.

Q. You are sure the six hundred and sixty dollars passed through your hands? A. I think it did; I think I paid it to Mr. Lynch.

Q. Where did you get that money? A. I think I took it out of another building association.

Q. How did you take it out of the other building association, do you know? A. No.

142 Q. Is it a fact that you ascertained the amount due, and then paid it—drew the money from another building association and then paid it? A. Yes; as I told Mr. Tobriner, I couldn't state exactly how much I took out; I would have to refer to my papers.

Q. What other building association did you draw money out of to pay the six hundred and sixty dollars? A. The German-American. I had the money there; I suppose I may have had the money in cash, at home; I forget; I didn't draw it out of the Workingmen's; I was settling up with them, and I think I had that in the German-American.

Q. You either drew six hundred and sixty dollars from the German-American Building Association, or else you had it at the house in cash? A. To the best of my belief I had it there in cash.

Q. Did you keep it in bank or did you have it at the house, loose? A. To the best of my belief, I paid that money myself; to the best of my belief, I paid that money to Mr. Lynch. I am positive I drew it out of the German-American Building Association, but I think I paid it to Mr. Lynch; I think so. Mr. Barnard may have paid it for me, but, to the best of my belief, I paid it to Mr. Lynch.

Q. You say you drew six hundred and sixty dollars out of the German-American Building Association? A. Yes.

Q. You remember that, do you? A. I remember drawing the money, but not the day; I had it there.

Q. Did you draw more out of the German-American Building Association than you needed to pay this debt? A. I don't remember.

Q. Isn't it a fact that you first ascertained the amount that was due to the Workingmen's Building Association and then drew the amount out of the German-American and paid it? A. I think that is about it.

Q. Before you could draw it you had to find out how much you owed? A. Yes, sir.

Q. Then you must have gotten this statement in the first place to ascertain how much you owed? A. Yes, sir.

Q. Then you got the money and paid it? A. I can't state that, you know.

Q. When you drew this money from the building association, don't you remember handing it over to Mr. Barnard, now Justice Barnard? A. I don't remember. He may have attended to it for me as he attended to my mother's business; but it never bothered me, because I had implicit confidence in Mr. Lynch and Mr. Daly. They always treated me nicely and I had confidence in them.

Q. You say Justice Barnard may have paid it for you? A. To the best of my belief, I paid it myself.

Q. But the reason you say that is because you paid these other sums at his house? A. Yes, sir.

Q. You don't recollect this particular payment? A. No.

144 Q. You don't recollect when you got the receipt? A. The day is there in the book, you know—March 22nd, 1894.

Q. That is the day you paid it, isn't it? A. I presume it is; the book so states.

Q. This statement is dated March 8th, so you had it probably a little while? A. He may have kept the statement at his office; I can't tell that.

Q. Isn't it a fact that along about March the 8th, when you got that statement, it didn't then have the receipt on it; then you went to the building association and drew out six hundred and sixty dollars, then on March 22nd, afterwards, paid it and got this receipt? A. I expect that is so; it looks that way.

Q. Then, when you first got the statement, it didn't have that receipt on it? A. I don't suppose it did.

Q. You have no recollection about it, have you? A. I have a recollection of it being sent me; I can't go into details.

Q. You can't recollect whether that six hundred and sixty dollars was paid to Mr. Lynch at his house or not? A. To the best of my belief, it was paid in his house.

Q. Do you know how you got this release you speak of? A. To the best of my belief, Mr. Lynch mailed it to me.

Q. How do you know Mr. Lynch mailed it to you if you received it by mail? Why couldn't I have mailed it to you, or Mr.
145 Daly? A. I suppose he transacted my business, inasmuch as I went to his house and told him I wanted to settle it.

Q. When you borrowed the money in '87 or '88, from whom did you get it? A. I didn't attend to it at all; Mr. Daly attended to it.

Q. When you stated you received the statement from Lynch, you mean that you received it by mail in consequence of a request to Lynch to let you have it? A. Yes; Mr. Lynch sent it, all receipted for record; trustees' receipts and so forth; he also sent that to me also (indicating a letter).

Q. This letter which is dated March 22nd, with your receipt? A. Yes, sir.

Q. That is on the letter-head of Fillmore Beall, isn't it—do you know whether Fillmore Beall sent it, or Lynch sent it? A. I suppose Lynch sent it to me.

Mr. LESTER: I offer this in evidence and ask that it be copied into the record.

NOTE.—And the same is here copied into the record by the examiner, and is in words and figures as follows, to wit:

Fillmore Beall, attorney-at-law, Fendall building, Washington, D. C.,
corner Four-and-a-half and D streets northwest.

MARCH 22, 1894.

Mary A. J. Power to Fillmore Beall, Dr.

146	March 22, '94.	To drawing release of trust to Wood-	
		ward and White.....	\$3.50
		To cash paid trustees.....	2.00
	" " "	notary.....	1.00
	" " "	recording.....	1.00
			<hr/> \$7.50

Received payment from Mr. John T. Lynch.

FILLMORE BEALL.

Will mail receipt for release to 1115 N street northwest.

J. J. CANTY, *Examiner.*

Stipulation.—It is stipulated and agreed between counsel for the respective parties to this cause that the paper above referred to may be copied into the record and the original returned to the witness.

By Mr. LESTER:

Q. Miss Power, didn't Mr. Barnard send you that release together with your other papers? A. I do not think so.

Q. This settlement was made quite a while ago—'92? A. Seven years ago last month.

Q. When was the first time you had your attention called to the matter after the settlement was made in '92? A. I would have to refer to my papers for the answer.

Mr. TOBRINER: He asks you when was the first time the matter was called to your attention?

Mr. LESTER: You didn't hear anything about this or any of this in '93, '94, or '95?

A. No; I had no trouble with them; I paid my dues.

Q. You never had occasion to remember any of these mat-
147 ters you have been testifying to till when? A. Until I was
summoned here—Tuesday, was it?

Q. Was that the first time? A. That was the first time; when I opened my book I found car tickets I had there in 1894.

Q. Prior to last Tuesday you must have been spoken to about it? A. No, sir; not at all.

Q. Then last Tuesday is the first time your recollection has been refreshed concerning any of these matters you have testified to? A. I heard about the association failing.

Q. (Interposing.) About any of these matters you have testified, your recollection had not been refreshed until last Tuesday? A. I felt perfectly satisfied until last Tuesday.

Redirect examination.

By Mr. TOBRINER :

Q. You stated in answer to a question of Mr. Lester that you thought that Mr. Lynch and Mr. Daly were doing you a favor in carrying your money to the building association; what did you mean by that? A. Because it was not convenient for me to attend the meetings, and Mr. Daly lived in the same neighborhood and Mr. Lynch out of the neighborhood, but still my business called me there. I was a teacher of music, and I would drop in there and he would take my money and pay it, so I always felt that he was doing me a favor by taking it for me in that way.

Q. Did you know that Mr. Daly was the treasurer and Mr. Lynch the secretary? A. I did.

148 Q. Why didn't you take it to some other member of the association? A. Well, I was acquainted with Mr. Daly and I was acquainted with Mr. Lynch, and, they both being officers, I thought that—Mr. Lynch had never refused and Mr. Daly had never refused to take it for me, and I was acquainted with both.

Q. You thought they were officers and had authority to receive it? A. That is it exactly.

Mr. LESTER: Objected to as leading and that the witness has said no such thing.

Q. Did Mr. Daly ever tell you that he had no authority to receive the money at his house?

Mr. LESTER: Objected to as not proper redirect.

A. I don't know that he did.

Recross-examination.

By Mr. LESTER :

Q. If you had known Mr. Broderick, the president, and he had lived right near you, you would probably have taken it to him?

A. I suppose I would not; I am not acquainted with Mr. Broderick at all, and have no recollection of ever seeing him.

MARY A. J. POWER,
By J. J. CANTY.

149 Thereupon MORGAN McINNERY, a witness of competent age produced on the part of the complainants and being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. TOBRINER :

Q. What is your name and where do you reside? A. Morgan McInnery; 1226 Seventh street northwest.

Q. What business are you in? A. Bartender.

Q. By whom? A. Michàel McInnery.

Q. Your brother? A. Yes, sir.

Q. How long have you resided in the city? A. Eight years; I was away for a year.

Q. Were you ever a member of the Second Workingmen's Building Association? A. Yes, sir.

Q. About what time did you begin there? A. About ninety-five, I believe.

Q. How long did you remain in the association? A. May, '97; first of May, '97.

Q. How much did you pay into the association every month? A. Some months ten and some fifteen dollars.

Q. Have you your book? A. No, sir; I have not got my book.

150 Q. What became of it? A. I used to pay my money—Mr. Lynch kept it.

Q. What Lynch—John T.? A. Yes, sir.

Q. What position did he hold in the association? A. I don't know; he used to always take my money for me.

Q. Do you know what position he held? A. Keeping the books.

Q. Secretary? A. Secretary, I believe.

Q. Where did you pay him your money? A. At his house.

Q. What kind of a receipt did you get? A. Just signed down Lynch and the amount.

Q. Signed the name of Lynch where—in what? A. In my book—regular building association book.

Q. Did you ever pay money to anybody else besides Mr. Lynch in the building association? A. No; I left it there a couple of times with his wife.

Q. When you got your money from the association you gave him back the book? A. I gave him the book to get the money.

Q. Did you get your money? A. All but ten dollars.

Cross-examination.

By Mr. LESTER:

Q. Why didn't you get that ten dollars? A. It was not in the book; it was not signed in the book.

Q. It was not in the book at all? A. No, sir.

151 Q. To whom did you pay that ten dollars you didn't get?

A. I didn't have the book with me, and I left the money at his house.

Q. And it was not in the book, and you never got it? A. No, sir.

Q. Who paid you your money? A. Mr. Lynch gave me his private check.

Q. For all of it? A. I put in two hundred and sixty-five dollars and got out two hundred and fifty-five dollars.

Q. And that, you say, Mr. Lynch gave you his private check for? A. Yes, sir.

Q. Do you know when? A. I couldn't say the date. I think it was about the second or third of March.

Q. Did you ask him for the other ten dollars? A. No, sir; I didn't see him afterwards.

Q. At the time he paid you the two hundred and fifty-five dollars didn't you see him then? A. He wrote me a letter.

Q. You didn't see him then? A. No, sir.

Q. Haven't seen him since? A. Yes, sir.

Q. Did you ever say anything about that ten dollars? A. No, sir.

Q. Why not? A. I was away; I was in Ireland for seven
152 or eight months, and it kind of dropped off.

Q. When you go to Ireland it don't prevent your saying anything to Lynch, does it? A. No; but I only didn't say anything about it.

Q. Why did you say it was not in the book? A. It was not in the book.

Q. When was the time you paid that money? A. It was the last time I paid.

Q. That you paid that ten dollars that was not put in the book. You never paid any more since, into the association? A. I drew out my money then.

Q. You have not paid any since that ten dollars that was not put in the book? A. No.

Q. When you wanted to draw out your money what did you do? A. I went to Mr. Lynch and told him I wanted my money.

Q. When did you get your money after that? A. About a month after that?

Q. Did you give any authority in writing to get this money for you? A. No, sir.

Q. Did you sign anything when you told him you wanted to draw out your money? A. I don't think I did.

Q. Then you got your check by mail? A. Yes, sir.

Q. On what bank was it? A. I think it was the Citizens' national bank.

153 Q. You say his private check. What do you mean by that? A. It was not the—it was his own check; it was not the building association's check.

Q. Signed in his own name? A. Yes, sir.

Q. For \$255? A. Yes, sir.

Q. Wasn't the check signed by Mr. Daly, too? A. No, sir.

Q. It was not? A. No, sir.

Q. Did you ever go to the building association meeting at all? A. I never did.

Q. Did you ever make any inquiries about the building association—I mean of the building association—about your money or anything else? A. No, sir.

Q. Do you know whether or not your name appears on the building association books as being a member of it? A. I couldn't say.

Q. You don't know whether you were a member at all, except the

fact that you paid money to Mr. Lynch and got a book. That is correct, isn't it? A. Yes, sir.

Q. Why did you pay ten dollars at sometimes and fifteen at others? A. According to what I could save.

Q. Oh, you didn't have regular amounts—just paid what-
154 ever you could save? A. Yes, sir; but my name was in the building association.

Q. Why do you say so? A. Because a friend of mine told me he heard it read out there one night.

Q. That is the only way you know that it was there? A. Yes.

Q. Who is your friend? A. Martin Hollohan.

Q. A couple of times you left money with Lynch's wife, did you?
A. Yes, sir.

Q. And the other times you paid him? A. Yes, sir.

Q. How long have you known Lynch? A. Since the first day I came to this country, in '93.

Q. How did you happen to meet him then? A. His wife was my first cousin.

Q. You know that the building association had meetings, don't you? A. Yes, sir.

Q. Why didn't you go down? A. I thought it was all right to give it to him.

Q. How far did you live from him? A. I lived within——

Q. (Interposing.) Three or four squares? A. More than that. I lived on Seventh street, 1226, and he lived on Ninth street, 2004, I believe.

Q. Isn't it a fact that you gave him, Lynch, the money to take for you because it was more convenient than for you to go your-
155 self? A. Yes, sir.

Q. That is the reason? A. Yes, sir.

Q. And the only reason? A. Yes, sir.

Q. And if it had been more convenient to pay it to the association you would not have paid it to Lynch? A. Yes, sir; I went there at first and continued to go there.

Q. You simply got him to take money down and get him to pay it for you because it was more convenient to go to him than to go to the building association? A. Yes, sir.

Redirect examination.

By Mr. TOBRINER:

Q. You say you thought it was all right to pay it to him? A. Yes, sir.

Q. Why did you think so? A. I thought it was the same as going to the building association.

Recross-examination.

By Mr. LESTER:

Q. Why? A. Well——

Q. Because he told you so? A. No, sir.

Q. Why—because he had married your cousin? A. No, sir.
156 Q. Why did you think that? A. I thought I had my building association book there and he could sign it.

Q. Why did you think it was just the same as paying it to the building association?

Mr. TOBRINER: He has just told you.

A. I told you I thought I had the book and he could put his signature to it; it was all right, and I thought it was the same as going to the association.

Q. If you had a book with my signature to it would you think it would be the same thing as going to the association? A. If you were under bond.

By Mr. TOBRINER:

Q. You mean if he was an officer—secretary? A. Yes, sir.

Mr. LESTER: I object to the witness being prompted.

By Mr. LESTER:

Q. Do you know what position he occupied? I mean Lynch. A. Yes, sir.

Q. What? A. He was keeping the books.

Q. Did he tell you so? A. I saw the books.

Q. What books did you see? A. These little books.

Q. Which books, books of the association? A. Yes, sir.

Q. What did they have in them? A. He told me he was to keep them.

157 Q. He told you so? A. I don't know whether he told me or not.

Q. Then why do you say he kept the building association books if you don't know whether he did or not? A. I know it.

Q. How—he either told you or he didn't tell you, didn't he? A. Question not answered.

Q. How do you know it? A. Well, he told me so.

Q. He told you? A. Question not answered.

Redirect examination.

By Mr. TOBRINER:

Q. Wasn't his name in your building association book as secretary? A. Yes, sir.

Mr. LESTER: Objected to as leading.

Q. Isn't that one of the ways you knew he was secretary? A. Yes, sir.

Mr. LESTER: Objected to for the same reason.

MORGAN McINNERY,
By J. J. CANTY.

158 Thereupon EDWIN C. Goss, a witness of competent age produced on the part of the complainants and being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. TOBRINER:

Q. What is your name and where do you live? A. Edwin C. Goss; 32 F street northwest.

Q. What is your business? A. Sergeant of police, Metropolitan police.

Q. How long have you been such? A. I have been a member of the force for about ten years.

Q. Were you a member of the Second Workingmen's Building Association? A. Yes, sir.

Q. For what time, Mr. Goss? A. From about May, '95, until I received my money in November, I think, '97.

Q. Have you your book with you? A. Yes, sir.

Q. The first deposit made by you in this book appears to have been May 8th, '95? A. Yes, sir.

Q. And the last entry? A. March 12th, '97.

Q. To whom did you make your payments, Mr. Goss? A. My wife paid John T. Lynch.

159 Mr. LESTER: I object to anything his wife did unless it was done in——

Q. Were you present when she made the payments? A. No, sir.

Q. Did you make any of these payments yourself? A. No, sir; I always gave her the money.

Mr. LESTER: I object to statements as to his wife.

Q. Did you withdraw your money from the building association? A. Yes, sir.

Q. When did you get it? A. I think I got it in November, '97. I ceased in paying in March, and I was from March till November in getting my money, or getting a settlement.

Q. This is the book that you got from the building association? A. Yes, sir.

Mr. TOBRINER: I offer this book in evidence.

NOTE.—And the same is filed by the examiner and marked "Complainant's Exhibit J. J. C. No. 5."

Mr. LESTER: I object to this book being offered in evidence, because it is proven not to have the slightest connection with this case, nor has the witness been able to identify it in the slightest manner.

Cross-examination.

By Mr. LESTER:

Q. What did you mean by saying that you were from March to November in getting a settlement? A. Well, I think it was about in March, or possibly the first of April, that I gave Mr. Lynch a legal notice that I wanted to withdraw the money I had in 160 the association, and from time to time he promised to pay me, and he put me off down, I think, until November, when I received a settlement.

Q. Did you go to the building association to make inquiry? A. —.

Q. Why not? A. Because I didn't think it was necessary; he was the secretary.

Q. What you mean, then, to say is that you had requested Mr. Lynch to make settlement and he kept putting you off from time to time; you made no inquiries from anybody except Mr. Lynch? A. That is right.

Q. Finally you got your money? A. Yes, sir.

Q. From whom? A. From Mr. Lynch.

Q. In what shape? A. In a check on the Citizens' national bank, drawn by him, Lynch himself.

Q. Personal check? A. Personal check; I presented it at the bank, and the paying teller asked a clerk about his account and he said it was O. K., and I got my money.

Q. It was his personal check—Mr. Daly was not on it? A. No, sir; Mr. Daly was not on it at all.

EDWIN C. GOSS,
By J. J. CANTY.

161 Thereupon JEREMIAH F. NELLIGAN, one of the complain-
ants, produced as a witness of competent age on the part of
162 the complainants and being first duly sworn according to law,
was examined as follows:

Direct examination.

By Mr. TOBRINER:

Q. Mr. Nelligan, you are the same J. F. Nelligan who testified at Atlantic City, are you not? A. Yes, sir; my name is Jeremiah Francis Nelligan.

Q. I want to ask you if you recall making any payments to the Second Workingmen's Building Association, on account of the indebtedness due by your father to it, whilst you were residing in this city. A. I do, sir.

Mr. LESTER: I object because the witness has testified already to that fact.

Q. Do you recall where you made such payments—in what different places? A. Yes, sir; I do.

Q. Please state. A. It was at Mr. Lynch's house; Mr. John Lynch's house, Florida avenue and Boundary—Florida avenue and Ninth street, I think.

Q. Mr. John T. Lynch that was secretary of the association? A. Yes, sir.

Q. Did you make payments at any other place? A. No, sir.

Q. Can you state whether, when you made these payments at Mr. Lynch's house, Mr. T. D. Daly was present or not?

Mr. LESTER: Objected to as leading and prompting the witness, and notice is given that a motion will be made to suppress testimony which is elicited in such a manner.

163 A. He was.

Q. Can you recall what took place? A. Yes, sir. My father sent me there to pay the money to the building association——

Mr. LESTER (interposing): I object to any statement as to what his father may have told him as being wholly irrelevant and immaterial and as hearsay.

Q. Mr. Nelligan, you testified——

WITNESS (interposing): I went to Mr. Lynch's house to pay the building association money——

Q. (Interposing.) Who sent you? A. My father.

WITNESS (continuing): And when I went there I inquired for Mr. Lynch, and Mrs. Lynch, his wife, told me that he was busy——

Mr. LESTER: Objected to as hearsay.

Q. You found him busy? A. Yes, sir; he was busy and the party he was talking to—when he went away Mrs. Lynch opened the door for me to come in and told me I could see him, and I went in and gave him the money.

Q. Who was present? A. Mr. Daly.

Q. What did you say to Mr. Lynch? A. I told him—I said, "John, my father sent me with the money; here is the money for the building association."

Q. Where was Mr. Daly at this time? A. Sitting there talking to Mr. Lynch.

Q. Was he so situated that he could hear what you said to Mr. Lynch? A. Both were sitting at the table and Mr. Daly says to me, "You are David Nelligan's boy?" I said, "Yes, sir." He said, "I didn't know he had a boy as big as you." I can't recall anything further I said with the exception that when I went to see him later, after my father's death——

Q. (Interposing.) Went to see whom? A. Mr. Lynch.

Mr. TOBRINER: I don't care for that; you testified to that here (indicating deposition taken at Atlantic City).

Cross-examination.

By Mr. LESTER:

Q. You are the same person who testified as Frank Nelligan?
A. Yes, sir.

Q. How many times did you ever make payments to Mr. Lynch?
A. Well, I can't recall exactly the number of times, but I know I have been more than once; several times.

Q. Half a dozen times? A. I couldn't say exactly; to tell you the truth, I couldn't really tell you.

Q. Don't you know whether you ever paid him as many as six times or not? A. I have paid the money there more than once, I know; I can recall two or three instances, the amount paid. I can remember them today like they happened yesterday.

Q. On these two or three instances you paid the money to Lynch at his house? A. I can recall two or three times when I paid the money at Lynch's house; I can recall the time I paid it at the hall.

165 Q. How many times did you ever pay it to Lynch at his house? A. I can recall two times at present.

Q. How many times was Daly present? A. I saw him once at Lynch's house, and I remember distinctly of seeing him at the hall.

Q. Then he was only present on one occasion when you paid money to Lynch—at Lynch's house? A. Yes, sir; I seen him once at the house.

Q. On that occasion how much did you pay? A. I can't recall; I think it was ten dollars.

Q. One month's dues? A. Yes, sir.

Q. When was that? A. Well, now, I don't know; I can't recollect when it was; it was prior to 1888.

Q. How long prior to '88? A. Possibly it was 1887; I don't remember; I know it was one of those years. I think it was 1887 or 1888.

Q. Do you remember what time of the year it was—spring, summer, or fall? A. Yes; I remember it was about this season of the year, because the doors were open and Mrs. Lynch and the children were on the steps—fine weather.

Q. About what time of day was it? A. It was evening.

Q. What do you mean as to hours—as to evening? A. Somewhere, I suppose, about six o'clock.

Q. What was Mr. Daly doing there at the time? A. He was sitting there at the table with Mr. Lynch when I went in.

166 Q. Who was the man there before you went in, who went out—whom you told about? A. I don't know.

Q. He was sitting at the table, Mr. Daly was—what was he doing, do you know? A. I don't know; just like Mr. Tobriner sitting there now, and Mr. Daly here; Mr. Lynch had some books on the table.

Q. I ask you what he was doing. A. He was sitting at the table; I don't know what he was doing.

Q. Did you carry your book with you on that occasion? A. No, sir.

Q. Just handed him the money? A. Yes, sir.

Q. What did you say to him? A. I just told him, Here is the money my father sent to the building association.

Q. Do you know whether Mr. Daly heard you? A. I am sure he heard me because he asked me if I was David Nelligan's son.

Q. What did Mr. Lynch do with the money? A. I don't know; he just set it down.

Q. Did he put it in his pocket? A. I can't recall.

Q. Do you know whether he put it into the table drawer or not?

A. No, sir.

167 Q. When did you first recollect all this? A. It come to me since—well, I don't know the time when. I suppose—Mr. Tobriner came up there, you know.

Q. Came up where? A. Came up to Atlantic City and taken the testimony. It has come to me since—

Q. Who was talking to you when it came to you? A. Merely Mr. Tobriner was talking to me—wanted me to state what I knew about it.

Q. It came to you when Mr. Tobriner was talking to you—when was that? A. While he was at Atlantic City, that time.

Q. Before you testified? A. I can't say about that.

Q. Why didn't you testify to it before? A. Probably I didn't think of it.

Q. Then it came to you since then? A. It didn't come to me since because I knew about it before.

Q. And you knew about it when you testified, didn't you? A. Yes, sir; he didn't ask me.

Q. And you had spoken to Mr. Tobriner about it before that? A. I had stated to Mr. Tobriner all I knew of it.

Q. Had you told him of this instance? A. Yes, sir; I had told him everything I knew of it.

JEREMIAH F. NELLIGAN,
By J. J. CANTY.

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EXHIBIT No. 1.

Filed October 1, 1901.

* * * * *

Mary Bresnahan in account with Second Workingmen's Building Association.

1884.

May 14.	By cash.....	\$20.
June 11.	"	10.
July 9.	"	10.
Aug. 13.	"	10.
Sept. 10.	" D. L.....	10.00
Oct. 8.	"	10.00

Nov. 12.	By cash.....		10.00
Dec. 10.	"		10.00
1885.			
Jan. 14.	" D. L.....		10.00
Feb. 11.	"		10.00
Mar. 11.	"		10.00
Apr. 8.	"		10.00
May 13.	"		10.00
June 10.	"		10.00
July 8.	"		10.00
Aug. 12.	"		10.00
Sept. 9.	" T. D. D.....		10.00
Oct. 8.	C. by cash		10.00
1886.			
May 19.	C. by cash.....		50.00
June 9.	"		29.25
July 14.	"		11.00
Ap'l 11.	" T. D. D.....		11. #
Sept. 8.	" T. D. D.....		11. #
Oct. 14.	" T. D. D.....		11. #
Nov. 11.	" T. D. D.....		11. #
Dec. 10.	" T. D. D.....		11. #
1887.			
Jan'y 13.	T. D. D.....		11. #
Feb'y 10.	T. D. D.....		11. #
Mar. 9.	Lynch		11.00
Ap'l 15.	T. D. D.....		11. #
June —.	Dues.....		11. #
July —.	" T. D. D.....		11. #
Aug. 15.	" T. D. D.....		23.10
169			
1888.			
Jan'y 7.	Dues. T. D. D.....		\$22.55
12.	" T. D. D.....		11.55
16.	" T. D. D.....		11.55
June 13.	By cash	Lynch.....	55.00
July 11.	"	Lynch.....	11.00
Aug. 10.	"	Lynch.....	11.00
Sept. 8.	"	Lynch.....	11.00
1889.			
Feb. 12.	"	Lynch.....	23.00
Mar. 13.	"	Lynch.....	11.00
Ap'l 10.	"	Lynch.....	11.00
May 8.	"	Lynch.....	11.00
June 12.	"	Lynch.....	11.00
July 10.	"	Lynch.....	11.00
Aug. 14.	"	Lynch.....	11.00
Sept. 14.	"	Lynch.....	11.00
Oct. 9.	"	Lynch.....	11.00

Nov. 12.	By cash	Lynch.....	11.00
Dec. 13.	"	Lynch.....	11.00
1890.			
Jan. 8.	"	Lynch.....	11.00
Feb. 12.	"	Lynch.....	11.00
Mar. 12.	"	Lynch.....	11.00
Apr. 9.	"	Lynch.....	11.00
May 14.	"	Lynch.....	11.00
June 11.	"	Lynch.....	11.00
July 9.	"	Lynch.....	11.00

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Memoranda as to Exhibits.

Exhibit No. 1, only the account with Mary Bresnaham is stated.

Exhibit No. 2 is a book similar to Exhibit No. 1, and shows the account with Thomas Barry from April 9, 1884, to June 8, 1898, both inclusive, in all 173 payments, all the receipts for which are signed by Lynch except three, which are receipted by Daly; those June 11, 1884, January 14, 1885, February 10, 1886, and one January 3, 1886, by some one whose signature cannot be made out.

Exhibit No. 3 is a book showing the account of Mary Lynch, with fifty-eight payments, extending from July 9, 1890, to October 11, 1897, all receipted by Lynch.

The account of payments by John Mangan at page 54 *et seq.* is omitted, the same being a copy of the book of said John Mangan, and shows sixty-five payments, from May 8, 1889, to April 10, 1894, all receipted by Lynch.

The account of payments by Mangan at page 57 *et seq.* is omitted, the same being a copy of the book of said John Mangan, and shows an account with Mangan of forty-nine payments, from February 21, 1895, to February 7, 1899; those from February 21, 1895, to October 12, 1898, forty-five payments, receipted by Lynch; payments of November 8, 1898, and February 7, 1899, receipted for by Daly; those of December 14, 1898, and of January 11, 1899, not signed.

The account of payments by Mary A. J. Powers at page 66 *et seq.* is omitted, the same being the account from July 9, 1894, to December 9, 1893, in all 107 payments, the first three entries of which do not show to whom the same were paid. Payments made from November 13, 1884, to March 8, 1892, inclusive, are receipted by Daly, excepting payment of March 11, 1886, which does not show by whom received, and May 9, 1888, and June 13, 1888, which are receipted by Lynch; the balance, fourteen, are receipted by Lynch.

The signature of Lynch to the book is shown on page 129 of this record.

Exhibit No. 4 is a book similar to Exhibit No. 1, and showing fourteen payments by Thomas Creamer, from May 10, 1893, to June 18, 1894, all signed by Lynch.

Exhibit No 5 shows the account of Edwin C. Goss and twenty-two payments, from May 8, 1895, to March 12, 1897, all signed by Lynch.

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Testimony on Behalf of Defendants.

Present on behalf of the complainants, Leon Tobriner, Esq.

Present on behalf of the defendants, Wharton E. Lester, Esq.

Mr. TOBRINER: I ask the examiner to exclude all witnesses, except the one under examination, from the room.

Mr. LESTER: I object to it, on the ground that the complainants' witnesses were not excluded from the room, but witnesses were allowed to be present in the room while the testimony of the complainants' witnesses was being taken.

Mr. TOBRINER: Counsel for the complainants give notice that if the defendants insist upon their objection, and the witnesses are not excluded, he will move the court to strike out the testimony of such witnesses as is taken while others are present.

Mr. LESTER: Please note that Mr. Daly stays in the room while the other witnesses are testifying.

(The other witnesses thereupon withdrew from the room.)

172 PETER M. BECKER, one of the defendants, a witness of lawful age called by and on behalf of the defendants, having been first duly sworn, testified as follows:

By Mr. LESTER: * .

Q. Where do you live? A. In Washington, at 930 New York avenue northwest.

Q. What is your business? A. I am employed in the Government Printing Office; I am secretary of the National Permanent Building Association and secretary of the Second Workingmen's Building Association.

Q. Will you please state whether or not you are one of the directors of that association? A. I am a member of the board of directors as secretary; yes, sir.

Q. Mr. Thomas Dunn has testified in this case that he was present before the board of directors on one occasion when the question of \$10 which he claimed to have paid into the association came up, and he was asked whether or not he did not say at that time that the \$10 was paid to Mr. Daly and not to Mr. Lynch. He also said that Mr. Becker, Mr. Ward, Mr. Lanigan, and Mr. Daly were present. Please state whether or not you have any recollection of that occasion.

Mr. TOBRINER: Objected to as immaterial, because if the purpose is to contradict the witness Dunn, it is with respect to a collateral matter which was brought out by the defendants in their cross-examination of the witness, and consequently it is immaterial in this case.

A. I recollect Mr. Dunn on a number of occasions stating that he had paid the money to Mr. Daly.

173 Q. Please state whether or not you recollect whether he said any such thing before the meeting of the board of directors as I have mentioned? A. Yes, sir.

Q. What was his statement, as near as you recollect it? A. That he had paid to Mr. Daly the \$10.

Cross-examination waived.

PETER M. BECKER,
By the Examiner, by Consent.

JOHN O'CONNOR, one of the defendants, a witness of lawful age called by and on behalf of the defendants, having been first duly sworn, testified as follows:

By Mr. LESTER:

Q. Where do you reside, Mr. O'Connor? A. 614 Second street northwest.

Q. What is your business? A. I have been in the livery business for thirty-odd years, but I am not now doing anything.

Q. What, if any, connection have you had with the Second Workingmen's Building Association? A. I belonged to it ever since it was organized.

Q. Do you remember the year when it was organized? A. I pledge you my word I do not, though I have the books at home.

Q. About how many years ago should you say? A. Well,
174 I belonged to the previous one for over twenty years. We changed the name from the Hibernian to the Workingmen's. I was the man that suggested the name.

Q. What office, if any, did you occupy in it? A. For four or five years previous to this——

Q. No; I mean in the Second Workingmen's Building Association. A. I did not have any office at all until five or six years ago. My business took me through the country, and I could not attend to it regularly; but they were getting scarce of directors, and they had me to go on the board of directors about six or seven years ago.

Q. Can you remember when it was you first went upon the board of directors? A. Indeed, I cannot; seven or eight years ago, I guess.

Q. You had been a member of the association prior to that, had you? A. Yes; ever since its organization.

Q. State whether or not you attended its meetings? A. I attended the meetings; yes, sir.

Q. When and where were they held? A. We had them at the corner of Eighth and E for a long time, and then we had them at the southwest corner of Eighth and E for some time. We had them first in the southeast corner; then we moved over to the southwest corner, and from there we moved down to the American house, I think.

Q. When did you move to the American house? A. Five or six years ago.

Q. Within the last five or six years? A. Yes.

175 Q. Prior to then, I understand, you had met at the corner of Eighth and E streets? A. Yes.

Q. Who were the directors while you were meeting at the corner of Eighth and E streets, about 1890; do you know? A. I could not rightly tell you, though I know them well. I could not rightly tell you.

Q. Were you a member of the association while Mr. David Nelligan was a member of it? A. Oh, yes; yes, sir.

Q. Were you present at meetings which he attended? A. I never remember to have seen him there.

Q. You never remember seeing him there? A. No, sir. I heard his name called out frequently, though.

Q. Tell us how these meetings were held. What was done at the meetings with regard to the payment of money—dues, I mean? A. The payment of money was in this way: Mr. Lynch, we will say, sat at a desk like that, in the corner; Mr. Daly sat right close to him, and as the members came in they would have their money in the book, and they would throw the book right down in front of Mr. Lynch, and he would take the money out of the book without counting it and shove it right across to Mr. Daly. Mr. Daly would count the money and then record it in his book, while Mr. Lynch would make the record in our little book, and at the same time record it in his own book.

Q. By "the little book" you mean the little pass book? A. Yes.

176 Q. Such as this I now show you (showing witness exhibit filed with answer)? A. Yes; Mr. Lynch always recorded the amount of money in those books.

Q. In those books? A. Yes; when he was there. Sometimes he would not be there. It was very seldom, though, that Mr. Daly would record them.

Q. What office did Mr. Lynch occupy? A. The office of secretary.

Q. And Mr. Daly? A. Treasurer.

Q. Was that true during the entire time of the existence of the association? A. Yes, sir.

Q. Until when? A. Until Mr. Lynch left here.

Q. About when? A. Two or three years ago.

Q. Who would bring the money down and pay it? A. Well, I always made it a rule to—

Q. No; I do not ask what you did, but as a rule did the members or other people for them? A. Sometimes people for them.

Q. Can you tell us what the general rule was as to that; whether the members brought their own money or not?

Mr. TOBRINER: I object to that as immaterial.

A. The majority of the members brought their own money. I always brought my own money, except on one or two occasions when I was sick and sent my son with it.

Q. Mr. O'Connor, did you know Mr. David Nelligan?

177 A. Yes, sir.

Q. For how long? A. I first saw him about 1854.

Q. Do you know when he died? A. Yes; I remember the time he died.

Q. What was his business, especially during the time he was a member of the Second Workingmen's Building Association—from 1884, say, until 1890 or 1892? A. His latter business was dealing in old clothes and horses down at the bazaar.

Q. What other business was he engaged in during the time you knew him? A. He was engaged in selling milk.

Q. How? A. Well, taking it around; he had some cows, I presume.

Q. Do you mean running a dairy? A. Yes; he had a little wagon and carried on a milk business on a small scale.

Q. Can you tell me whether or not you, as a member of the board of directors, knew of the existence of the deed of trust on land which had been made by Mr. Nelligan, which is filed here with the testimony of the complainants, securing an indebtedness from Nelligan to the building association? A. I was not on the board of directors when he got that money.

Q. Did you know it was in existence while you were one of the board of directors? A. Yes.

Q. Will you please state why payment of it was not enforced? A. Well, I can't rightly tell that; but the treasurer and president called it up before the board of directors on several occasions, and it was put back from one time to another to give him an opportunity to pay this money.

Q. And at whose request and why; do you know? A. Well, principally on the secretary's request. He said there was ample security there for to pay all this money; and on three or four occasions the question of this indebtedness was brought before the board of directors and Mr. Lynch said that there was plenty of money, and that it would be soon settled.

Cross-examination.

By Mr. TOBRINER:

Q. When was this Second Workingmen's Building Association formed, if you can remember? A. I think it was in 1884.

Q. What is your best recollection about that? A. My best recollection is that it was in 1884 or '5.

Q. When did you first become an officer in the building association? A. I think it was about seven years ago.

Q. That was in 1894? A. Yes. Well, I can't tell exactly, but I would say that to the best of my knowledge it was seven years ago.

Q. Can you remember the month when you became a director? A. No, I do not; because I did not want to become a director anyhow if they could get along without me. My business wouldn't permit me to be there; that is the reason I was not on there before that time.

179 Q. Is it your recollection now that you became a director in 1894, or later? A. I presume it was about that time. It may have been a little longer than that; but I don't think it is anything less than that.

Q. You say that the way the stockholders paid their money into the building association was that they first handed their books with the money in them to Mr. Lynch, the secretary? A. Yes; they put them right in front of him on the desk.

Q. And that he then delivered the books to Mr. Daly, who was sitting near him? A. Yes.

Q. Mr. Daly made a record of it in his book, did he? A. Mr. Daly counted the money and made a record in his book.

Q. And then handed the stockholders' book to Mr. Lynch? A. No; Mr. Lynch had possession of the stockholders' book, and took the money out of it, and moved it over to Mr. Daly, while he recorded the amount in the stock book?

Q. Mr. Lynch then first took the money and the book? A. Yes.

Q. He counted the money first? A. Who?

Q. Mr. Lynch. A. No; he didn't count the money at all. He just took the money out of the book and shoved it right over to Mr. Daly, and Mr. Daly counted the money.

180 Q. Would Mr. Daly report to Mr. Lynch the amount of money? A. Mr. Daly would say, "So much."

Q. And then Mr. Lynch would receipt for it in the stockholders' book? A. Yes.

Q. Simply by writing down the date, the amount paid, and his name, "Lynch"? A. Exactly; yes.

Q. And that was the way you paid your dues, was it? A. That was the way I paid my dues.

Q. And that was the practice at all meetings, was it not, when Mr. Lynch was present? A. Well, sometimes people would be in a hurry to get away, and they would hand their book and money to Mr. Daly, and he would receipt for it in this book. I presume all those little books will show where Mr. Daly's name is there on several occasions as receiving this money.

Q. But Mr. Lynch would, ordinarily, receipt for it himself in the pass book, unless people were in a great hurry? A. In the pass book, yes.

Q. And that was the book which the stockholders kept, to show the amount that they had paid into the association? A. Yes, sir.

Q. For how long a time did that practice continue? A. It continued from the first to the last.

Q. Would you remain during the meeting? A. Which meeting, sir?

Q. When these stockholders would pay their money in?
181 A. As a general thing, I used to remain to see how money would sell after collections were made. They generally used to sell money after the collections were made.

Q. That is, make loans to people who wanted an advance? A. Yes.

Q. They had to pay a premium on it, did they? A. Oh, yes. After they compared the books and the money was collected, they would call out the amount of each man's payments, and then they commenced selling money.

Q. Who was in the habit of receipting the majority of the time in the members' pass books, Mr. Lynch or Mr. Daly? A. Mr. Lynch.

Q. And this continued while you were a member of the board of directors, did it? A. Yes; it continued from the first.

Q. The directors all knew that Mr. Lynch was receipting for these moneys, did they not?

Mr. LESTER: The question is objected to as not being possible of being answered.

Q. Receipting which?

A. The directors all knew that Mr. Lynch was receipting for these moneys; did they not? A. Oh, certainly they did. They couldn't help from seeing him.

Q. They saw him do it, like you did? A. Yes.

Q. And the directors would be around this desk? A. Yes.

182 Q. While these payments were going on? A. Yes; some of them would; not the majority, I suppose, but some of them would.

Q. Can you give us the names of any of the gentlemen who were directors of the building association while you were a director? A. There are three of them here now.

Q. What are their names? A. A man by the name of Mr. Ward, Mr. Lanigan, and Mr. Morgan. There were several others, sir. Sometimes a director would drop out occasionally and settle up his accounts, and then they would have to put a new man in his place. It is very difficult to keep track of all those people.

Q. Did you have a committee in your association who would examine the books of the officers? A. No; they had some that belonged to the association. I don't know but that they went outside to get some expert on the books on one or two occasions.

Q. That was part of the association proceedings—to have the books examined—was it not? A. Yes.

Q. And was it their duty to report who was delinquent? A. It was their duty, but often they did not. They did not do it.

Q. This committee was appointed once every six months, was it not? A. No; once a year, I think.

Q. That committee was always appointed, was it not? A. Yes.

Q. When you became a member of the board of directors in 1894, did you become acquainted with the names of those people who owed the building association at that time for moneys advanced to them as loans? A. Did I know them?

183 Q. Yes. A. The majority of them I did, yes.

Q. Did you know that in 1886 Nelligan had borrowed from the building association? A. I did not, because I was not in the board then.

Q. Now, you say in answer to a question put by Mr. Lester that

three or four times the matter of Nelligan's indebtedness was called to the attention of the board of directors? A. Yes.

Q. Can you state just about how many times that occurred? A. I am positive that it occurred three times.

Q. After you became a member of the board? A. Yes; and previous to Mr. Lynch's going away from here.

Q. How long previous to Mr. Lynch's going away from here did that occur? A. Well, it may have happened twelve or eighteen months before he went away from here—the first exposure of the thing.

Q. What do you say? A. At first when it was mentioned it was probably eighteen months before he left there.

Q. And about when did he leave? A. I didn't take the date when he left.

Q. About how long ago? A. I don't know; maybe a couple of years ago, and maybe more.

184 Q. He ceased to be the secretary of your association, did he not? A. Yes; because he didn't pay no attention to it. He made himself scarce then on several occasions. We had no head or tail to our association while he was absent. We had nobody to take his place, and we had to get another man.

Q. Now, when was it that you got the other man? A. We got him very soon after Mr. Lynch left.

Q. About how long have you had the other man as secretary? A. We got him, I tell you, directly after Mr. Lynch graduated.

Q. And about — long have you had the other man as secretary? A. I told you we got this other man as secretary soon after Mr. Lynch graduated.

Q. How long have you had him as secretary?

Mr. LESTER: He means in years and months.

By Mr. TOBRINER:

Q. About how long? A. I can't tell you when Mr. Lynch left. We got him directly after Mr. Lynch left.

Q. Did Mr. Lynch remain in this city that you know of? A. Not that I know of. He remained in the city some time when he was not attending to the association, for two or three months.

Q. And then he went away? A. Yes.

Q. It was about the time that you were investigating his accounts as secretary of the association that he left? A. Yes, 185 sir.

Q. And so far as you know he has not been here since? A. Not that I know of.

Q. Do you know where he is? A. I do not.

Q. Now, you say that between twelve and eighteen months before he left the matter of Nelligan's indebtedness was called to the attention of the association? A. Yes, sir.

Q. And that was the first time that it was called to the attention of the association, so far as you know, was it? A. The first time, so far as I know.

of the amount of money loaned on such and such property, and people buying money there that had no property to give as security, but who were secured by money paid into the association.

Q. Did the board of directors look over the books, or was there a list read to the board of directors of the people who were owing moneys to the association? A. Sometimes; yes. Any party that would be behind-hand in paying, they were reported frequently for non-payment. We depended on the secretary to a great extent to look after the interests of the association.

Q. The secretary had full charge of the papers and the books of the association, did he? A. Yes.

188 Q. He issued pass books to the people who wanted to become members, did he? A. Yes.

Q. He kept a number of those at his house, did he not? A. Yes.

Q. And when a man wanted to become a member of the association, and went to the secretary's house, he took his money and have him a book for it, did he not? A. Yes.

Q. How long did that continue? A. And he would bring the book down the next meeting night.

Q. Who would—the secretary? A. The secretary would.

Q. And how long did that practice of the secretary to keep books at his house and receive new members by issuing to them a pass book and receiving their money continue? A. It continued up until the time he went away, pretty much. There was stock issued about a year before he went away, or probably less; new stock. I think there was.

Q. The board knew that he was receiving money at his house and issuing these books, did it not? A. No. We never countenanced him receiving any money at the house.

Q. Well, you knew he was doing it, did you not? A. No, sir.

Q. You testified just now that he did that, and had continued to do so for a long time? A. Which?

189 Q. That he was receiving money at his house and issuing books to new members? A. I didn't say at the house, sir; I said at the meeting. I never knew him to receive money and issue pass books at his house.

Q. You did not? A. No, sir. They always applied to the meeting for these things; and as far as I was concerned, as a member for a good many years, I wouldn't give John Lynch or any other man my money outside of the building association meeting night, because it is in the constitution that we must come there and pay our money at that meeting.

Mr. TOBRINER: The last suggestion of the witness is hardly called for by the question, and notice is given that I shall move to strike it out at the hearing.

By Mr. TOBRINER:

Q. When Mr. Daly called the attention of the board of directors, as you testify, to this Nelligan loan, for how many months or years

Q. Who called it to the attention of the association? A. Mr. Daly called it to their attention.

Q. Anybody else? A. I think Mr. Fogarty called it up.

Q. Who was he? A. He was the president.

Q. And what was done about it? A. There was nothing done about it. There was some excuse made; that they had some prospect of selling this ground to advantage, and they were not the only people the board of directors let up on, and gave them ample time to make good sales of their property. We were lenient with them.

Q. At that time Mr. Nelligan was dead, was he not? A. Which time?

186 Q. When the matter was called to the attention of the association by Mr. Daly? A. Yes; I believe he was.

Q. Was there any notice given by the association to Mr. Nelligan's heirs or wife about this indebtedness? A. I don't know. Them notices we left with the secretary and treasurer, to notify those people.

Q. You say nothing was done about this Nelligan matter when it was called to the attention of the board of directors? A. No; it was postponed from one time to another, to give them some chance to sell this property to advantage, as I understood it, and at the same time the secretary said there were ample funds there to their credit to secure that loan.

Q. You had in the association what is known as a valuation committee, did you not? A. Yes, sir.

Q. What was the duty of the valuation committee? A. Their duty was, when a man would buy money there at a meeting night, for the buyer to give the number of the square and lot, and tell it to the secretary, and let him send the valuation committee out to look at the place, and see how much money it was worth, and report back to him.

Q. Was it also the duty of the valuation committee to examine properties during the pendency of the loan, to see that they continued to be worth the amount that was advanced or secured on them by the building association? A. No; after they were examined once that was the last of it.

Q. Who looked after the continuing loans, to see that the
187 security did not depreciate? A. I do not know that there was anybody.

Q. You had also a finance committee, did you not? A. Yes.

Q. What was their duty? A. To look over the books to see how they were.

Q. That is the committee about which you were speaking a little while ago? A. Yes; I don't know that it was necessary for the valuation committee to go around the second time, because the purchaser was decreasing the amount of his loan each month.

Q. How often did the board of directors meet? A. They meet once a month.

Q. Of what did their proceedings consist? What did they do at these meetings? A. The principal thing consisted of their approval

did he report that they were in default in the payment of their monthly dues? A. He didn't say, sir; he didn't say for how long. He said it was almost time it was settled one way or the other.

Q. Did he report that they had not paid anything from the year 1890? A. I didn't hear that. I heard him say that it was time something should be done about this loan. Mr. Lynch made the answer, he said, "You needn't make yourself so officious about this. There is plenty of security to secure this loan, and it will be settled shortly."

190 Q. And thereupon the board of directors took no action?

A. They didn't take any action.

Q. When did the board of directors first take action about it? A. After Mr. Lynch left here.

Q. How long after he left? A. Well, very soon after he left; within two or three or four months. They took action at the same time they took action on some other properties here.

Redirect examination.

By Mr. LESTER:

Q. When you spoke of the secretary having the books and control of the books, to what books did you refer? A. The association books.

Q. Tell us whether or not you meant also to include in that the treasurer's books. A. No, sir.

Q. You speak of "the other man" being secretary. Whom do you mean? A. Which other man?

Q. Who succeeded Mr. Lynch? A. Mr. Becker.

Q. The gentleman who has just testified? A. Yes, sir.

Q. You are one of the defendants in this case, are you not? A. I presume I am; but I had as soon not be.

Q. Mr. Becker is also a defendant, is he not? A. Yes, sir; I presume so.

Q. When you speak of the stockholders' book, will you please tell us if you meant a book similar to this (exhibiting to
191 witness book filed as an exhibit with the answer)? A. Yes; that is the book.

Recross-examination.

By Mr. TOBRINER:

Q. Mr. O'Connor, I forgot to ask you this question: The finance committee of which you speak examined the treasurer's books, did they not? A. They were supposed to examine both of them.

Q. Those of the treasurer and secretary? A. Yes, sir.

Q. Were they supposed to report to the association the amount that people who had received loans from the association were in default? A. They were supposed to. They were supposed to give an exhibit of the standing of the association at the winding up.

Q. Did they not do it? A. Well, as far as I understand, they did not on several occasions.

Q. Why? A. I don't know.

JOHN O'CONNOR,
By the Examiner, by Consent.

192 THOMAS M. LANIGAN, one of the defendants, a witness of lawful age called by and on behalf of the defendants, having been first duly sworn, testified as follows :

By Mr. LESTER :

Q. Where do you reside, Mr. Lanigan? A. 927 G street southwest.

Q. You are one of the defendants in this case? A. Yes, sir.

Q. What is your business, Mr. Lanigan? A. I am employed in the engineer department, sewer division.

Q. Of the District government? A. Of the District government; yes, sir.

Q. Are you connected with or have you been connected with the Second Workingmen's Building Association? A. Yes, sir.

Q. During what period of time? A. From 1887 up to the present.

Q. In what capacity? A. Well, as a stockholder up until 1895, I think, when I was elected on the board of directors.

Q. Tell us whether or not you attended meetings of the association—regular stated meetings. A. I attended them very regularly.

Q. Where were they held? A. They were held at Eighth and E streets northwest and at Seventh and Pennsylvania avenue northwest.

Q. When were they held at Seventh and Pennsylvania
193 avenue? A. When they were held there?

Q. Yes; when did they commence to be held there? A. I don't remember just when they moved down.

Q. About how long ago? A. I judge about five years ago—four or five years ago.

Q. Please tell us how these meetings were conducted at Eighth and E streets, at which place you say the meetings were held from 1887 until four or five years ago. A. Well, on the second Wednesday of each month that was supposed to be the stockholders' meeting to pay their dues.

Q. What time of day? A. Half past seven or eight o'clock.

Q. At night? A. At night.

Q. Go on. How were they held, and what was done? A. Their regular order of business there was the payment of dues, at the stockholders' meeting.

Q. Who was present? Which of the officers were present to receive money? A. As a general thing, Mr. Daly and Mr. Lynch, the secretary and treasurer.

Q. What were their positions in the office, as to whether or not they had seats or desks or what? A. They had desks, or sometimes

a table. Sometimes there were two tables, and both tables were pulled together. If not, there was a single table and both sat at the same table.

Q. Then how did they do? A. In which way?

194 Q. What was the form of procedure? Did they call a roll, or how did they pay their dues? A. Well, as a general thing, a person would come in and go up to the desk or table and pay his dues.

Q. How did they pay them? What did they hand in? A. Some people would put their money into their pass book, you know, and pass the book to the secretary, and he would take the money and pass it over to Mr. Daly, and receipt on the pass book for the amount.

Q. What position did Mr. Lynch occupy? A. Secretary.

Q. During all the time you have mentioned? A. Yes.

Q. And Mr. Daly? A. Treasurer.

Q. Is Mr. Daly still treasurer? A. Yes, sir.

Q. When did Mr. Lynch cease to be secretary? A. I think it was in 1898, along about August of 1898. That is the best of my recollection.

Q. Did you know Mr. David Nelligan? A. No, sir.

Q. Can you tell us whether or not you knew as well as the board of directors, and whether the board of directors knew, of the delinquency of David Nelligan—the fact that he owed money to the association? A. I remember it being called to the attention of the board at one meeting that Nelligan had failed. It was called up by the president, and the question got up to the secretary, and he remarked that the security was good. That was brought about in other cases. There were several cases at the time, and he was authorized to notify those people that they were not within the limits of the constitution, and he reported on other cases
195 until the Nelligan case was reached, and he was asked how about the Nelligan case, and he reported that the security was good.

Q. How many times, if you can remember, did the question come up before the board of directors of Nelligan owing money? A. I only remember it being called up once.

Q. Do you know when that was? A. Well, that was, I judge, about a year or so before Mr. Becker was elected secretary—a year or a year and a half. It may have been a little longer. I don't just remember the dates.

Cross-examination.

By Mr. TOBRINER:

Q. Are you still a director in the association, Mr. Lanigan? A. Well, we have not had any meetings. I suppose I am still called a director.

Q. You say you have not had any meetings? A. We have not had any meetings for some time.

Q. For how long? A. Well, we couldn't really style it as a board

meeting. We have gotten together and had a talk; but then there has been no regular board meeting for some time—well, I judge it must be a year since we had a regular board meeting.

Q. The association is not receiving any more deposits? A. No, sir; not to my knowledge.

Q. It is not doing any business? A. No, sir.

196 Q. The association is in liquidation, is it? A. Yes, sir.

Q. You became a director in 1895, you say? A. I think 1895.

Q. And you were a member from 1887? A. 1887. I took stock in 1887, and my dues were paid about a year or so while I was out of town. I had a party take my stock in the association from me—a brother of mine. He paid my dues.

Q. The members paying their dues at the meeting would deliver their pass books and the money to Lynch? A. Well, not always. As a rule, I always put my money in my book; but others would come there and hand their book to the secretary and their money over to the treasurer.

Q. Would you pass your book and money over to the secretary? A. If the treasurer was busy at the time, why, I would pass my book and money—

Q. To the secretary? A. To the secretary. But if the treasurer was not busy, I would take the money out and pass it to him, and pass the book to the secretary.

Q. What would he do? A. Who?

Q. When you passed it to the treasurer? A. What would who do—the treasurer?

Q. Yes. A. Why, he would receive it, count it and acknowledge the amount, and Lynch would receipt for it in my pass book.

197 Q. Lynch would sign the receipt in your pass book? A. Yes, sir.

Q. And in the cases where the stockholders passed their books and money to Lynch he would keep the book and pass the money to the treasurer? A. That was the way; yes, sir.

Q. And Mr. Lynch would receipt in the pass book for the money and hand it back to the stockholder? A. Well, after the amount was given, he would receipt.

Q. So that Lynch was in the habit of receipting for the money? A. He would give us a receipt on the pass book, always.

Q. That was the only receipt you had, was it not? A. Yes.

Q. Or that the stockholders had? A. Yes, sir.

Q. Lynch had charge of the books, papers, and securities of the association, did he not? A. Yes, sir.

Q. And he conducted the affairs of the association, did he not? A. Well, the duties of secretary he did.

Q. He had not anything to do with the valuation of the securities, had he? A. Of property?

Q. Yes. A. Not to my knowledge. There was a valuation committee appointed.

198 Q. And there was also a finance committee? A. There was a finance committee. I disremember now whether it was standing or not; I think it was appointed every year.

Q. Their duties were to examine the books of the treasurer and the books of the secretary, and to report every year to the association just how its affairs stood, were they not? A. To the best of my recollection, they just went over the secretary's books.

Q. Did they not report to the association whether there was anybody delinquent or not? A. No; not the finance committee.

Q. Who did report to the association the names of the delinquents? A. The secretary was supposed to.

Q. Did the board of directors report it to the association at annual meetings or at their monthly meetings? A. To the stockholders? No, sir; I have no recollection of them being reported to the stockholders. They generally acted on that themselves.

Q. They generally acted on it themselves? A. Yes, sir.

Q. Now, you say that at one meeting the Nelligan indebtedness was called to the attention of the board of directors by the president? A. That is the best of my recollection; it may have been oftener. I only remember the president calling it at one time to the attention of the board.

Q. And that was about a year before Mr. Lynch ceased his connection with the association? A. Well, it may have been a
199 little longer—a year, a year and a half, or two years—somewhere along there.

Q. At that time what did Mr. Lynch say? A. The question was put to him about several parties that were not within the limits of the constitution; they had run behind in their payments. He reported on these other cases, and the question was then put to him about the Nelligan case. He did not report on the Nelligan case; and the question was put to him by the president, "How about the Nelligan case?" He remarked, to the best of my recollection, that the Nelligan security was all right.

Q. He remarked that the Nelligan security was all right? A. That the Nelligan security was all right.

Q. How long had the Nelligans been in default in the payment of their dues at that time? A. Well, sir, I could not tell you.

Q. About how long? A. I couldn't tell you. I only know that they were in default in the payment of their dues, and I couldn't say how long.

Q. Was it not called to the attention of the board of directors that they had not paid anything for at least eight years? A. No, sir; not to my knowledge.

Q. The amount that they were in default was not reported to you? A. No, sir.

Q. And it had never been called to your attention as a member of the board of directors by any one prior to this occasion? A. No, sir; I have no recollection of it.

200 Q. Did you usually attend the meetings of the board of directors? A. Yes, sir; I attended very regularly.

Q. Mr. Lynch ceased to be the secretary of your association about how long before it went into liquidation? A. Just about that time he ceased to be secretary.

Q. And after he ceased to be secretary it went into settlement; it went into liquidation of its affairs? A. Right afterwards; yes, sir.

Q. About how long before Mr. Lynch ceased to be secretary was this Nelligan matter up before the board? A. Why, I judge somewhere about a year or a year and a half—between a year and two years.

Q. What action did the board take about the matter? A. Well, the board didn't take any action after the secretary reported that the security was all right.

Q. Did the treasurer or secretary report the amount that they were in default? A. The treasurer or secretary? Not to my recollection.

Q. Did they report how long they had ceased paying? A. No.

Q. Was there any inquiry made as to those facts? A. Not to my recollection.

Q. I call your attention to section 4 of article 13 of the constitution of the Second Workingmen's Building Association, which reads as follows:

"Stockholders taking an advance from the funds of the association shall pay one dollar per month for every share on which such advance is made, in addition to the monthly dues; and if the same shall be unpaid for four months, the board of directors
201 may order the trustees to compel payment by proceedings upon the bond and deed of trust according to law."

You were authorized and it was the rule of the association that where a person who had received an advance was in default for four months in the repayment of his monthly dues, he would be notified of his default, would he not? A. No; he would be notified, and there were often cases where people would come and give an excuse why they could not pay, and the time was extended for them.

Q. Then you would give them a little indulgence? A. Yes.

Q. Do you know of any instance where you waited two years? A. No; but I think I know of a case that went over a year.

Q. You do not know of any case where they waited two, three, four, five, six, seven, eight, or nine years? A. No, I do not. There were cases there where I really could not say how long they waited; but there was one case in particular, I know—at least I think I know—that it was over a year.

Q. That was an unusually long time, was it not? A. No; there was other cases there where people gave excuse, where the board was lenient to them and gave them time.

Q. But where there was no excuse whatsoever made by the parties in interest it was not your business in such cases to wait over a year, was it? A. No.

Q. And if there had been cases of that kind called to the
202 attention of the board of directors, you would have taken some action, would you not? A. I judge we would.

THOMAS M. LANIGAN,

By the Examiner, by Consent.

DANIEL P. MORGAN, a witness of lawful age called by and on behalf of the defendants, having been first duly sworn, testified as follows :

By Mr. LESTER :

Q. Mr. Morgan, please state what, if any, connection you have had with the Second Workingmen's Building Association. A. I was a stockholder first, and afterwards a member of the board of directors.

Q. When did you become a stockholder? A. I judge in 1892, between 1891 and 1892.

Q. During what period were you a director? A. I was a director from 1894, I judge—1893 or '94; the latter part of 1893 or 1894.

Q. Until when? A. Up until 1899.

Q. It has been testified here that the association is in process of liquidation. Will you tell us when that began? A. To the best of my mind, that began in 1898.

Q. At that time who was secretary? A. Mr. Lynch.

203 Q. How long did he continue to be secretary after the liquidation began? A. Not very many months; no more than about two or three.

Q. Then who became secretary? A. Mr. Becker.

Q. Is he still secretary? A. That I don't know, sir.

Q. Was he when you ceased to be a member of the board of directors? A. Yes, sir.

Q. Will you please tell us whether or not, during the time that you were one of the board of directors, the question of David Nelligan owing the association ever arose? A. The only time that the question ever arose as to the indebtedness of Mr. Nelligan was at the time Mr. Lynch, I believe, was called upon to render an account of those parties that were indebted to the association, and among others his name was mentioned. It was called the Nelligan estate, I believe, at the time, and Mr. Lynch was asked to find out the indebtedness and to inform Mr. Nelligan or Mrs. Nelligan, I believe it was, at the time. It was then, at the next board meeting, that he reported that he had informed Mrs. Nelligan, and that she stated—or rather I won't say he stated that she stated it, but in his report he stated that the Government was about to purchase the property and they wished an extension of time; and, as well as I remember, I think the board granted an extension. That is the only thing I remember about the Nelligan matter.

204 Cross-examination.

By Mr. TOBRINER :

Q. Mr. Morgan, you say that the association began its liquidation in 1898? A. I don't say the liquidation; no. A defalcation was claimed to be made in about 1898. The liquidation was after that, sir. That was in 1899, I think.

Q. How long after a defalcation was made was it before Lynch ceased to be secretary? A. How long afterwards?

Q. About how long, yes. A. Well, to the best of my knowledge, I think it was about three months—two or three months.

Q. By whom was the defalcation claimed to have been caused? A. By Mr. Lynch.

Q. And he left the city after that? A. So it seems.

Q. Then the association went into liquidation? A. Yes, sir; that, to the best of my knowledge, was in September. There was a report asked of Mr. Lynch, but he failed to make a report to the association or to the board of directors.

Q. A report as to what? A. As to the standing of the association. Then in October, as well as I remember it, another report was asked, and Mr. Lynch still had failed to come.

Q. October of what year; do you remember? A. I think it was 1898, sir.

Q. 1898? A. Yes, sir. Then, as you say, it was that he went into liquidation, and Mr. Becker was appointed secretary.

205 Q. About how long before September or October of 1898, or the time that this report of the standing of the association was asked of Mr. Lynch, was it that Mr. Lynch was asked about the Nelligan account? A. I think it was in July or August.

Q. Of the same year? A. Yes, sir.

Q. The July or August preceding the time when he was succeeded by Mr. Becker? A. By Mr. Becker; yes.

Q. That same year? A. As well as I remember it, sir.

Q. That was in the last few months of the existence of the association in active business? A. Oh, no; I can't say that, because I have learned that the association was in existence after I left it, sir.

Q. But it was a comparatively short time or a few months before Mr. Becker took charge of Mr. Lynch's books? A. As well as I remember; yes, sir.

Q. Now, you had been a member of the board from 1893 or the early part of 1894? A. Yes, sir.

Q. How often would you attend the meetings of the board of directors? A. Monthly; I can't say regularly, though.

Q. And at those readings did the board discuss the affairs of the association? A. Yes, sir.

Q. The conduct of its loans? A. Yes, sir.

206 Q. The fact as to whether any persons who had obtained loans from the association were in default or slow in the making of their repayments, and so on? A. Yes, sir.

Q. And at none of those meetings was this matter of Nelligan discussed? A. Well, in speaking about that, it was discussed; yes, I judge, in the neighborhood of maybe a year before this time. I don't know why or what was the reason for it, but it had been left hanging fire until this time.

Q. Now, you were present at that meeting where it was discussed about a year before, as you say, the first time? A. Yes, sir.

Q. Can you state what action was taken or what was said at that time? A. No, sir; I could not recall it now.

Q. Was it stated to the association how much they were in default at that time? A. It was stated, but what the amount was I cannot recall.

Q. Do you recollect whether it was stated that they were in default some six or seven years in the payment of their monthly dues? A. No; I don't remember that.

Q. If that had been stated, you, in all probability, would remember that fact, though, would you not? A. Well, I might have remembered it, Mr. Tobriner; but I say I cannot positively state the exact conversation which took place, nor do I remember the exact amount.

Q. You say in this last conversation Mr. Lynch was asked about the Nelligan matter? A. Yes, sir.

207 Q. And you say there in your answer that he was asked to find out about the amount that he owed? A. No; not about the amount. He was asked to find out the indebtedness, yes—the whole indebtedness of the Nelligan matter. It was referred to as “the Nelligan matter,” and he was asked to find out the indebtedness, and to notify Mrs. Nelligan with others. How I come to remember this so well is that among those that were being informed by Mr. Lynch with Mr. Nelligan was Mr. McCartney, whose property was shortly afterwards sold. I think it was in the first part of spring, along in April.

Q. The board could have ascertained at that meeting just how much Mr. Nelligan did owe, could it not? A. Yes, sir; I suppose it could.

Q. Did they do it? A. No, sir.

Q. Was the board at that time or any subsequent time aware that the Nelligans had paid no monthly dues from some time in the year 1890? A. Well, now, that I don't know.

Q. This thing occurred about 1898—did it not—the latter part of 1898? A. Yes; whether they paid or not I don't know.

Q. It was called to the attention of the board that for eight years they had paid nothing? A. I can't vouch for that, sir.

Q. If it had been, would not that fact have been so striking that you would have recalled it, Mr. Morgan? A. Well, I don't know; I can't just say exactly about that, Mr. Tobriner.

Q. You say Mr. Lynch then reported that the Government
208 was about to purchase the property? A. Yes, sir.

Q. And asked for further time? A. And asked for further time and it was granted.

Q. Did the board at that time know how much the Nelligans owed? A. I presume it did; yes, sir.

Q. Have you any recollection? A. No, sir; I have not—not definitely.

Q. Was it then reported to the board that they had not paid dues for eight years or nine years? A. Well, now, that I can't recall, nor can I swear to it.

DANIEL P. MORGAN,
By the Examiner, by Consent.

WILLIAM J. WARD, a witness of lawful age, one of the defendants in this action, called by and on behalf of the defendants, having been first duly sworn, testified as follows :

By Mr. LESTER :

Q. Where do you reside? A. 1000 8th street northwest.

Q. You are one of the defendants in this case? A. Yes, sir.

Q. Tell us when, if at all, you were connected with the Second Workingmen's Building Association. A. I have belonged to it since about 1894. I could not give you the exact date ; about 1894.

Q. In what capacity? A. Stockholder.

209 Q. Have you ever occupied any other position? A. Well, I was elected a director afterwards.

Q. When? A. In 1898, I think.

Q. Please tell us whether, after you became a director, the question of Mr. Nelligan or the Nelligan estate owing the association ever came up? A. Yes, sir ; we discussed it several times.

Q. When and how? A. Well, after I became a director Mr. Lynch was out of the association, and we got a committee to examine the books and report, and that was one of the cases that they reported was not settled up.

Mr. TOBRINER : Objected to as hearsay.

By Mr. LESTER :

Q. Tell us how these meetings were held. A. The directors' meetings?

Q. No ; the regular stockholders' meetings. A. At the regular stockholders' meetings the treasurer and secretary, Mr. Daly and Mr. Lynch, occupied adjoining tables. They usually had small tables. They sat side by side, and the stockholders came in, and some of them would have the money in their books and pass it to either one, and some of them would take the money out and pass the money to Mr. Daly and the book to Mr. Lynch.

Q. That was the custom while you were a stockholder, was it? A. Yes, sir.

Cross-examination.

By Mr. TOBRINER :

Q. What did they pass their books to Mr. Lynch for? A. Their pass books? He signed them.

210 Q. He signed what? A. He signed the pass books.

Q. For what purpose? A. As a receipt for the stockholders.

Q. It was Mr. Lynch who receipted for the money? A. Mr. Lynch receipted for it and put it in his book, and Mr. Daly in his.

Q. Did Mr. Lynch keep an account of the receipts? A. They both kept accounts of the receipts.

Q. And that continued from 1894, whilst you were a stockholder? A. Yes, sir.

Q. You never heard this Nelligan matter discussed until after Mr. Lynch was deposed as treasurer? After he ceased to act as treasurer, then you heard the Nelligan matter and loan discussed? A. I had heard it on the street, but I was not a director before that time.

Q. You never heard it in the directors' meetings after Mr. Lynch ceased to be secretary? A. After I became a director; yes, sir.

Q. The association is not now doing any business, is it? A. No, sir.

Q. Since when? A. Well, practically since Mr. Lynch left. We then started, after our investigation, to wind up the affairs of the association.

Q. And he left about when? A. He left some time in the summer or fall of 1898. I could not give the month, but—

Q. Do you mean by "leaving" that he left the city? A. 211 Well, I don't know when he left the city; but that is the last we knew of him around the association.

WILLIAM J. WARD,

By the Examiner, by Consent.

TIMOTHY D. DALY, a witness of lawful age, one of the defendants, called by and on behalf of the defendants, having been first duly sworn, testified as follows:

By Mr. LESTER:

Q. Mr. Daly, what, if any, connection have you had with the Second Workingmen's Building Association? A. The treasurer, sir.

Q. For what length of time? A. Nearly twenty years.

Q. For what length of time, compared with its existence? A. Well, the Workingmen's Association No. 2 was organized under a new principle.

Q. Who was its first treasurer? A. I was and am yet.

Q. Then you were its treasurer during the whole period of existence of the Second Workingmen's Building Association? A. Yes, sir.

Q. What is your business, Mr. Daly? A. I retired about nine years ago from business.

Q. What was your business? A. Butter merchant—but- 212 ter, eggs, and cheese. I was in business forty-five years.

Q. During the period of the existence of the Second Workingmen's Building Association, how often did the stockholders, the members, meet? A. The second Wednesday of each month.

Q. How many of those meetings did you attend? A. All but two.

Q. All but two during the entire time? A. During the entire time.

Q. Do you remember when those two were? A. I think they were in 1888—March and April.

Q. It has been testified that the Second Workingmen's Building Association is in process of liquidation. When did that begin? A. It began in June, 1898.

Q. It has been testified that Mr. Lynch was the secretary of the same association. When did he become such? A. When it was organized in 1884.

Q. When, if at all, did he cease to be secretary? A. I think it was in 1898.

Q. Please tell us whether or not the liquidation began before or after he ceased to be secretary. A. It began before he ceased to be secretary.

Q. Before he ceased to be secretary? A. Yes.

Q. I now show you a book. Please tell us what that printed matter in the front is. A. That is the constitution of the Second Workingmen's Building Association.

Q. That book is dated what time and printed in what year? A. 1884, sir.

Q. This, you say, is the constitution? A. Yes, sir.

Q. Tell us whether or not there were any other by-laws than are contained in this constitution. A. Yes; there was an amendment.

Q. When? A. I think it was in 1890.

Q. I then show you another book which has been filed here as an exhibit with the defendants' answer. Does this second book which I show you contain the amendment to the constitution which you have mentioned? A. Yes, sir.

Mr. LESTER: I offer both these books in evidence.

(The book last above referred to has already been filed as an exhibit to the answer in this case, marked "Exhibit T. D. Daly No. 1," and the first book above referred to is filed herewith, marked "Exhibit T. D. Daly No. 2.")

By Mr. LESTER:

Q. Show us of what the amendment consists, please. A. It is to issue different series.

Q. What is the section? Do you mean this matter which is under the words "Adopted April 14th, 1886"? A. Yes, sir.

Q. On page 14? A. On page 14, yes, sir.

Mr. LESTER: I will ask the examiner to mark the portion indicated by the witness.

(As requested, the examiner marked, one page 14 of "Exhibit T. D. Daly No. 1," the matter indicated by the witness.)

By Mr. LESTER:

214 Q. When and where were the meetings of the stockholders held? A. They were held at the corner of 8th and E and at the corner of Pennsylvania avenue and 7th.

Q. During what length of time, respectively? For how long at 8th and E? A. About ten or twelve years.

Q. And after that on Pennsylvania avenue, I believe? A. Yes, sir; and after that we moved to 920 New York avenue.

Q. On what dates or on what days? A. The second Wednesday of each month.

Q. What hour? A. Half past seven—eight in summer and seven in winter.

Q. How often were the meetings of the board of directors held? A. The following Wednesday—the third Wednesday.

Q. After the stockholders' meeting? A. Yes, sir; the first Wednesday after the stockholders' meeting.

Q. Tell us who were the directors, if you can, from 1888 or 1889 to 1899. A. John Kelly, D. P. Morgan—

Mr. TOBRINER: Is he a butcher?

The WITNESS: No; he is in one of the departments. Peter McCartney was a director a long time, but he is dead.

Mr. TOBRINER: A builder?

The WITNESS: A builder; yes. Thomas Broderick.

By Mr. LESTER:

215 Q. Where is he? A. He lives on Pennsylvania avenue. He was a director for some time—Mr. Lanigan.

Q. Who has testified? A. Yes; Mr. O'Connor, who has testified, for part of the time, Dennis Fogarty, and Daniel Shannon. That is all I remember.

Q. And the defendant Murphy? A. And John T. Murphy.

Q. Where is he? A. He is out of the city, in Pittsburg.

Q. When were payments of dues made? I presume you had dues from each member? A. Yes.

Q. When were the payments made? A. On the second Wednesday of each month.

Q. Where? A. At the hall.

Q. By whom would they be made? A. By the stockholders and different parties bringing them.

Q. What do you mean by "different parties bringing them"? A. Well, I mean anybody could send his book to the association, and they would hand it in and credit it on their book.

Q. Tell us if you know whether or not that was frequently the case, that other people brought money down. A. Oh, yes; several.

Q. Tell us whether or not you have brought money for other people. A. Yes, sir.

216 Q. Often? A. A good many times.

Q. Please tell us whether or not these other directors did that. A. Yes, sir; a good many of them did that. There is a man, Mr. Lanigan, that brought half a dozen books down. He would bring half a dozen books every meeting-night time.

Q. Who else would bring them? A. Strangers and children and everybody, so they would come.

Q. How were these payments made, and to whom? A. Well, they were made to the secretary and myself.

Q. Where were you sitting? A. I was sitting on one side and he on the other. They would hand the book sometimes to the secretary and sometimes to me. The secretary would turn the money over to me, and I would count it and give him the amount, and he would credit it on their book, and sign his name.

Q. The money was always delivered to you, then? A. The money was always delivered to me.

217 By Mr. LESTER:

Q. Mr. Daly, you have testified that Mr. Lynch was secretary of the building association from the time of its organization until 1898. Please tell us of what his duties consisted.

218 Mr. TOBRINER: Objected to because the constitution and by-laws of the association prescribe the duties of the secretary. They are in writing.

A. The duties of the secretary were to keep an account of the doings of the association and the stockholders.

By Mr. LESTER:

Q. Tell us whether or not those duties were enumerated within the constitution. A. Yes, sir.

Q. Now, tell us whether he performed the duties which were enumerated within the constitution or not. A. He did not to a certain extent.

Q. Which of them did he not perform? A. Why, when we wanted him to make a final report to the association he would not do it.

Q. Did he perform any of the duties of other officers of the association? A. No, sir.

Q. Not at any time during the existence of the building association? A. Not to my recollection.

Q. You have stated that liquidation began before Mr. Lynch ceased to be the secretary? A. Yes, sir.

Q. It has been brought out in testimony that Mr. Lynch was charged with misappropriating moneys, or something of that sort. Please tell us whether or not the board of directors had any information of such misappropriation of money, if there be, at the time liquidation was resolved upon. A. No, sir.

Q. It has also been testified that Mr. Lynch brought numerous sums of money as dues for the association. Please tell us what you know about that. A. Yes; Mr. Lynch brought them, like all other directors, and children and men and women brought money down there to the association meetings to pay for their dues.

Q. Who else can you enumerate who brought them? A. Mr. Lanigan.

Q. How often? A. Almost every meeting.

Q. For how many people, and how? A. For five, six, or seven, sometimes; from three to five, six, or seven.

Q. How were those payments made? A. They were made to me.

Q. By Mr. Lanigan, you mean? A. Yes, sir.

Q. What were the details? A. Well, the books were handed in. I counted the money, marked it on my book and handed the book over to Lynch, or else he would keep the book and hand me the

money, and I would count it and give him the amount, and he would sign his name as receipting for it.

Q. Was that the way payments were made by Lanigan for other people? A. Yes, sir.

Q. Is that the way dues were paid by Mr. Lanigan for other people? A. Yes, sir.

220 Q. You have heard the testimony of these witnesses who testified here in Washington on behalf of the complainant, and you know who they are? A. Yes, sir.

Q. Tell us whether or not the payments of their dues were made in that manner or in any other manner. A. Yes, sir.

Q. When they were made by Lynch? A. They were made by Lynch, yes, sir, in that manner.

Q. Can you tell us whether or not payments of dues were ever made to Lynch? A. No, sir; except in the way I speak of.

Q. But you did not consider that payment to the association? A. No, sir.

Mr. TOBRINER: Objected to as calling for the conclusion of the witness and as leading.

By Mr. LESTER:

Q. Who kept the treasurer's books? A. I did.

Q. Did the secretary ever keep them? A. No, sir. The secretary never got them in his possession except when the finance committee was examining them.

Q. Examining them? A. Examining his books and mine. Then he would possibly have them over night. I would take them there in the evening.

Q. Why was Lynch deposed? A. Because he was irregular in his duties.

221 Q. In what respect? A. Well, at the annual meeting in April of 1898 he gave us a report which stated the assets but not the liabilities. I, as one of the members of the board, declined to accept that report, and moved that it be returned, so that we could get a final report from him again, with the liabilities included.

Q. Tell us whether or not the building association lost any money by Lynch.

Mr. TOBRINER: Objected to as immaterial.

A. They have not lost any money except the loss of money that they loaned on his real estate.

Q. Did you know David Nelligan, deceased? A. Yes, sir.

Q. For how long? A. I had known him for possibly fifteen years.

Q. What was his business? A. He was what we term a cow jobber. He dealt in cows; he was a cow dealer.

Q. What sort of a business man was he? A. He was what we term a very good business man.

Q. You knew him very well? A. I knew him well; yes, sir.

Q. Tell us whether or not Mr. Nelligan himself ever made any payments to the building association. A. He did.

Q. I mean of his dues. How did he make them? A. He brought the book down there, his own book, and handed it in to the association, to the treasurer, and put it to his credit.

Q. You have seen him do it? A. I have, several times.

222 Q. You have entered his credits, have you? A. I have entered his credits; yes, sir.

Q. Mrs. Nelligan has testified that her brother-in-law negotiated the loan which was made to Mr. Nelligan on the property described in these proceedings. A. No, sir.

Q. What, if anything, do you know about that? A. Mr. Nelligan came down there to the association and bid in the money for his own loan.

Q. He did? A. Yes, sir.

Q. Were you present? A. Yes, sir.

Q. Tell us whether or not he received the money represented by the deed of trust. A. He did.

Q. From the association? A. Yes, sir.

Q. Has it ever been paid? A. No, sir; only a part of it has.

Q. What part of it? A. Well, some portion. I think Nelligan got about \$1,100, and about three hundred and some odd dollars had been paid up to the time of his delinquency. The balance has not been paid.

Q. In what manner was such payment made? A. Sometimes it was made in one, two, three, and four months—that is, at a time. Sometimes he would get two months behind, and he would pay two months in advance, so as to relieve him of the fines.

Q. You are referring to dues, I presume? A. Dues, yes, sir.

223 Q. What distinction, if any, is there between settlement with a building association and dues? A. The settlements must be made to the treasurer.

Q. What are the settlements? A. Settlements are payments of money borrowed from the association and paid back.

Q. By the stockholders? A. By the stockholders.

Q. Were any settlements ever made to Mr. Lynch during the time that building association was being carried on? A. Not one, to my recollection.

Q. To whom were they made? A. They were made to me, as treasurer.

Q. Miss Power has testified that her recollection is that she made a settlement of money she borrowed to Mr. Lynch. Please tell us your recollection of that. A. My recollection is that Judge Barnard paid her mother's indebtedness as well as hers.

Q. To whom? A. To me.

Q. As treasurer? A. As treasurer; yes, sir.

Q. You did receive her money? A. Oh, I received the money. I received \$658.60. That was her indebtedness at the time she settled with the association.

Q. Can you tell us when it was Mr. Nelligan defaulted in paying dues? A. I think it was in 1889 or '90.

Q. Tell us whether or not the question of his indebtedness
224 ever came up before the board of directors; and, if so, how
often after that time. A. It did. Four or five months af-
terwards it was brought before the board of directors.

Q. What, if anything, was done? A. Our defaulting secretary,
or our rascally secretary, promised us, being the nephew of Mrs.
Nelligan, that there was ample money in the association to secure
his indebtedness.

Q. What do you mean by that—"ample money"? A. That is,
live shares of stock held by somebody.

Q. How often after 1890 until you notified Mrs. Nelligan that the
property would be sold did that question come before the board of
directors? A. It came before the board of directors several times.

Q. How many; can you say? A. A dozen times.

Q. How would it come before them? What was done on each
occasion? A. Well, we would ask the secretary what had become of
the Nelligan matter. Personally, I made several attempts, privately,
to get him to settle that matter.

Q. Who? A. Lynch. He always told me, he says, "You seem
to be in a hurry with this." I said, "John, that party is behind-
hand, and, like others, we have a perfect right to compel them to
settle up."

Q. What do you mean when you say that you tried to get the
secretary to settle? A. Well, I tried to get him to explain why the
delay was, because he kept putting us off.

Q. Now, tell us whether or not it was the practice of the
225 association to wait on delinquent members such a long
period. A. Oh, yes; and particularly after the death of
Nelligan they were more lenient to the widow.

Q. Why? A. On account of her being a widow and on account
of the promise of the secretary, stating that there was ample security
to pay the indebtedness.

Q. Was there any other reasons for the delay? A. Well, then,
after two or three years it was finally decided to compel her to close
up, and we called on the secretary for a statement, and he told us,
"Now, gentlemen, it is not worth while to be in a hurry. The Dis-
trict is going to take Vermont avenue"—the street that goes right
through her place—"the Government is going to take it, and then
she is going to make final settlement."

Q. Do you know under what law? A. Under the extension law.

Q. The highway extension act? A. The highway extension act;
yes, sir.

Q. How did you happen to notify Mrs. Nelligan about the delin-
quency of her husband's estate? A. Well, after we found out the
action of the secretary, and I tried for nearly one or two years, over
eighteen months, to find out where she lived, and I could not find
out. I got it finally, at last, and I wrote to her at Atlantic City.

Q. Do you know where Mr. Lynch is? A. No, sir.

226 Q. Tell us what, if any, search you have made for him.

A. I have not made any search for him, much.

Q. It has been testified that he is under indictment and out of the city. Do you know anything about that? A. I don't know anything about it. I know, from what Mr. Tobriner told me, that he is under indictment.

Q. Do you know whether or not he is in the city? A. No, sir; I don't know whether he is or not.

Q. A witness, Miss Lynch, has testified that she received certain moneys from the association, and that there was a check given in her favor of two hundred and odd dollars upon which she never received the money. What, if anything, do you know about that?

A. I don't know anything about it. I know I gave her the check.

Q. To whom did you give the check; do you know? A. Mr. Lynch.

Mr. TOBRINER: Which Lynch?

The WITNESS: John J. Lynch, the secretary—the defaulting secretary.

By Mr. LESTER:

Q. Tell us whether that check has been paid or not. A. I don't know.

Q. By the bank, I mean. A. Oh, it has been paid by the Bank of Washington; yes, sir.

Q. Tell us whether or not Mr. Lynch was ever authorized by the board of directors or anybody to receive money at his house, or to issue books, as has been testified by one of the witnesses he did. A. No, sir.

Q. He never was. Do you know whether or not Mr. 227 Lynch, the ex-secretary, did receive money from various people at his house? A. I do not know; but I know he would have to give them to the treasurer before they would get their certificates.

Q. Before they could get their certificates? A. Yes, sir.

Q. Whose money did he bring, as a rule, if you know? A. Oh, everybody's; nobody's in particular; his uncle's and his cousin's and his aunt's.

Q. And his friends'? A. And his friends'.

Q. It has been testified here by two of the witnesses, I think Gosse and McInerney, that they paid him money at his house and received the books therefor. Tell us how a man became a member of the association. What was it necessary for him to do? A. He would have to sign the constitution, in the first place, and get his certificate of stock and his book.

Q. What is this paper (exhibiting paper to witness)? A. That is a certificate of stock, sir.

Q. Tell us whether or not that is one of the certificates of stock issued by the company. A. Yes, sir.

Q. Tell us whether or not that is like all that were issued to the various members. A. That is like all that were issued to the stockholders.

Mr. LESTER: I offer this in evidence, so far as the form of it is concerned. I do not care about the writing.

228 (The above-mentioned paper is filed herewith, marked "Exhibit T. D. Daly No. 3.")

By Mr. LESTER:

Q. Mr. Daly, witnesses Goss and McInerney have testified that they received money from Mr. Lynch—that they received his personal check for the money, that money being the dues which they had paid in which they wished to withdraw. Will you please tell us how that money was paid out? A. That money was paid to Lynch by me—that is, Gosse's.

Q. Upon what order? A. Upon the order of the secretary, attested by the president—or, rather, signed by the president and attested by the secretary.

Q. Please look at these two papers which I hand you and tell me whether or not they are the orders upon which the money was paid out in those particular cases. A. Yes, sir; they are the orders.

Q. Is that the way money was usually paid out? A. That is the way money was paid, and those orders were my vouchers for my disbursements.

(The two papers above mentioned were thereupon offered in evidence by counsel for the defendants, and the same are filed herewith, marked respectively "Exhibit T. D. Daly No. 4" and Exhibit "T. D. Daly No. 5.")

By Mr. LESTER:

Q. When, if at all, did Mr. Broderick cease to be a director? A. I think it was in 1887 or 1888.

229 Q. It has been testified here on behalf of the complainants that Lynch returned to the Nelligans the deed of trust, the bond, *etc.* What, if anything, did you or the board of directors know of that? A. We did not know anything about it, sir.

Q. Until when? A. Until Mr. Tobriner told me. That is the first information I had.

Q. After this suit was filed? A. I think so.

Q. If it was not after this suit was filed, can you tell us whether it was shortly before or not? A. Well, it was at or about that time—about the time of the suit.

Q. Do you know when those papers passed out of the possession of Mr. Lynch? A. I do not know, sir.

Q. Have you any of the minutes of the meetings of the association? A. No, sir.

Q. Where have they gone? A. He took them, with some other papers.

Q. Who? A. Lynch.

Q. Mr. Dunn has testified about ten dollars which he claimed to have paid into the association which he never got out. He testified that at a board of directors' meeting, at which Mr. Lanigan, your-

self, and some others were present, he did not say that he had paid that money to you, but that he claimed then to have paid it to Lynch. What, if anything, do you know about that? A. I
230 know he said he had never paid any money to Lynch in his life; he had paid it all at the building association meetings.

Q. To you? A. Yes.

Q. Do you know M. P. Sullivan? A. Yes.

Q. Was he a director in this association at any time? A. No, sir.

Q. Was he a member of it at any time? A. No, sir.

Q. Mrs. Nelligan has testified that M. P. Sullivan and her husband were together and her husband said to Mr. Sullivan. "I am rid of the building association now," and Sullivan said, "I don't know how that is. Daly has not any account of your money on his books." Did Sullivan know anything about your books at that time? A. No, sir.

Mr. TOBRINER: Objected to as hearsay evidence.

By Mr. LESTER:

Q. Where were your books at that time? A. In my possession.

Q. Did he ever have them in his possession? A. No, sir.

Q. Did he ever see them? A. He may have seen them.

Q. I mean, did he see what was written in them? A. No.

Q. Did you ever tell him what was in them? A. No.

Q. Did you ever tell him anything about the Nelligan
231 matter being in them, or anything about it? A. No.

Q. Mr. Jeremiah Francis Nelligan testified that he went to Lynch's house one night, and you were there, and that he paid Lynch his dues in your presence, on which occasion you remarked that you did not know his father had such a big boy. What, if anything, have you to say about that? A. I never saw him, to my knowledge, there.

Q. You never saw him there, to your knowledge? A. No, sir. I did not know him when he came in there the other day.

Q. Did you ever see him or any one else pay Mr. Lynch any money in his house? A. No, sir.

Q. Mrs. Nelligan has said that neither she nor her husband ever got a book from the association. You have already testified that he brought a book there and paid, have you not? A. He did certainly bring it to the association to pay his money.

Q. She has testified that in or about the summer the Florida Avenue property was sold—meaning 1890 or thereabouts—she told you about the payment of money to Lynch. What have you to say about that? A. Never; she never did.

Q. She never did? A. No.

Q. Did you ever see Mrs. Nelligan? A. Yes.

Q. When? A. She was down at my office.

Q. When? A. It must have been about 1890.

232 Q. Where was your office? A. On Louisiana avenue between 9th and 10th.

Q. Tell us the circumstances. A. She came down there to know how she could make a settlement. I told her to go to Lynch and get a statement and bring the amount of that statement to me, and I would receipt that statement, and she could take that statement to the attorney and he would give her her release; without doing that she could not do it.

Q. What, if anything, did you tell her about the signing of the release? A. I told her that she could not possibly get the release unless I signed it.

Q. What, if anything, did you tell her about the payment of the money? A. And also the payment of the money—that it should be paid to me.

Q. She says further that she told you what Mr. Sullivan had told her. Did she ever tell you that? A. No, sir.

Q. Did she ever have any conversation at all with you about the building association, other than the one you have mentioned? A. None whatever.

Q. At any time? A. At any time.

Q. She says that you told her after she had told you she had paid the money to Lynch to hush—"Now, hush!" A. No, sir; I never told her that. She has never spoken to me about it.

Q. And that you also told her, "Do not say anything about
233 that now." A. No, sir; I never said any such thing.

Q. She says that she went home and in the course of a few days she came down to see you again, and at that time your young man came to the railing and said you were not there. Do you know anything about that visit? A. No, sir; no more than the young man told me that that woman who was there the other day was there again.

Q. Was there again? A. Yes.

Q. Were you at the office at that time when she came? A. No, sir.

Q. Did you know who it was? A. No; I did not know exactly. I probably thought it was Mrs. Nelligan.

Q. Have you seen her since then at all? A. Not to my knowledge. I saw her husband about two weeks after that, maybe ten or twelve days, and I told him that his wife was down to see me, and he said, "Yes; we are making preparations to settle."

Q. Tell us whether or not you told him anything about the details of settlement. A. No; I did not tell him, because I thought he was well posted.

Q. Tell us whether or not you recognize Mr. Lynch's signature on the face of each of these exhibits which I have handed to you? A. Yes, sir.

Q. And his endorsement on the back of two of them? A. Yes, sir.

Q. Is that his writing? A. That is his writing, and the
234 president's writing also.

Q. Is this building association incorporated, or is it a voluntary association? A. It is a voluntary association.

Q. Not incorporated? A. No, sir.

Q. Thomas Barry says that he went to the hall on one occasion and found you there; that he offered you a book and money, and you said you would not take it until the secretary came in. A. Because the secretary had his roll book, and I did not want to be bothered until he came and commenced to call the roll.

Q. Have you any recollection of that particular incident? A. No, sir; I have no recollection of it. It may have transpired, but I have no recollection of it.

Q. The bill in this case says, in paragraph 6, that the secretary was permitted by the officers of the association and the directors thereof to receive payments from various stockholders. You have already denied that. It also says that Lynch had practically the sole management of the affairs of the association. What have you to say about that? A. That is not so, sir. He was subject to the instruction of the board of directors.

Q. It further says that all transactions had by Nelligan in the matter of receiving said loans and advances and payments made by him were with Lynch. A. No, sir.

235 Q. Who paid the money to Nelligan when he received it?

A. I did, as treasurer.

Q. Tell us whether or not the board of directors, or yourself as treasurer, had at any time notice that Lynch had received any money from Nelligan or Mrs. Nelligan other than the dues that were actually paid into the association and received by you. A. No, sir.

Cross-examination.

By Mr. TOBRINER:

Q. When was this association organized, Mr. Daly? A. In 1884.

Q. And you were the treasurer and Mr. Lynch was the secretary from the time on until some time in 1899? A. No, sir; in 1898 he was deposed. I am still treasurer.

Q. What books and papers of the association did you keep in your possession as treasurer? A. Only the treasurer's books.

Q. Your account books? A. My account books—accounts of receipts and disbursements.

Q. Mr. Lynch, as secretary, had the ledgers showing the condition of the accounts between the association and stockholders and borrowers, did he? A. Yes, sir.

Q. What other papers or books did he have besides that?
236 A. He was supposed to have all the books and papers connected with the association, with the exception of the treasurer's books.

Q. And all the securities belonging to the association? A. Not the security. He had the bonds and the deeds here.

Q. Those were the evidence of the securities that the association held? A. The evidence of securities; yes.

Q. When a stockholder borrowed money from the association he

executed his bond to the association representing his indebtedness and his obligation, did he? A. Representing his obligations to pay the treasurer for his obligations.

Q. And he executed a deed of trust, usually, on real estate, to secure the performance of the conditions of that bond? A. Yes, sir.

Q. Those papers Mr. Lynch had in his possession? A. I suppose so. He was authorized to have them. I did not know where they were.

Q. And you would make your payments on an order signed by the president and attested by the secretary? A. Yes, sir.

Q. On receiving that order you issued your check? A. Yes, sir.

Q. To whom would you deliver that? A. Which; that order?

237 Q. The check. A. I would deliver the check to whoever would bring me the order, but make it payable.

Q. To the borrower? A. No; I would make it payable to the party making the demand—the member.

Q. Now, you had in your association a practice of making annual reports, I believe? A. Yes, sir.

Q. Of assets and liabilities? A. Yes, sir.

Q. Did that exist from the time of the organization of the association? A. Yes, sir.

Q. Who made up that annual report? A. Well, sir, it was made up by Mr. Lynch and the committee going over the books—the finance committee, as it was commonly called.

Q. And to whom would that report be delivered? A. It would be delivered to the board of directors and to the stockholders in general. It would be delivered to the stockholders and then the board of directors.

Q. Would it be printed? A. Yes, sir; printed.

Q. Ordinarily and usually, of what did that report consist, and what did it show? A. Well, it consisted of the stockholders, the liabilities, and the assets. That is all it consisted of—the amount of money disbursed and received.

Q. And the names of the stockholders? A. No; it did not give the names of the stockholders. It gave the total, the full
238 amount of the money loaned and received.

Q. The names of the persons who owed the association money? A. No.

Q. It was simply a statement of the amount of business done by the association? A. Yes, and the assets and liabilities. The liabilities were not named in the last report, and that is why I objected.

Q. The assets consisted of securities covering the amount loaned out? A. Yes.

Q. This report was made every year to the association? A. Every year.

Q. Would the board at any time go over the names and lists of the stockholders? A. No; the board never would go over it. The stockholders' names would be called out in the meeting.

Q. Would the board ever go over the list of persons who owed the association for borrowed money? A. No. They would request the secretary and the finance committee to report liabilities. They would never make it a personal matter.

Q. Do you remember when David Nelligan first became a borrower of the association? A. I think I do.

Q. About what year? A. I think it was in 1885 or '6, as near as I can remember. I think it was 1886 or '7.

Q. And he used to come down, as you say, sometimes,
239 and pay his own dues? A. Yes, sir.

Q. That continued until the year 1890? A. I think it was 1888 or 1889.

Q. And then he ceased paying? A. Yes, sir.

Q. Now, when was it after that that you called the attention of the board to the fact that he had ceased paying? A. I think it was four or five months after that.

Q. How do you fix the four or five months? A. Well, because generally whenever a person is in arrears four or five months their attention is called to their indebtedness.

Q. By whom? A. By the secretary or treasurer.

Q. Have you an independent recollection of the fact that you called the attention of the board to the default of David F. Nelligan within four or five months after he ceased paying? A. Well, it may be four or five months, or it may be six months; but it is within that limit.

Q. Do you recollect that in this particular instance, the Nelligan instance, you did call the attention of the board to that fact, or are you testifying from your usual custom of calling the attention of the board to defaults? A. I am positive that I called the attention of the board to his indebtedness. In the first place, I asked the secretary what had become of the indebtedness and why he did not report it; he said, "Now, don't be in a hurry. He is going
to sell that property and make a settlement."

240 Q. That is, when the property was to be taken for condemnation purposes—street purposes? A. No; previous to this, before he finally made that excuse.

Q. Do you recollect what month that was? A. Well, I cannot exactly name the date.

Q. Do you recall the year? A. I think it was in 1889—if I am not mistaken, 1888 or 1889.

Q. The fall or the spring of the year? A. It was the fall of the year.

Q. Who was present at that meeting? A. The board of directors were. I cannot name them. A good many of them are dead now.

Q. Can you name anybody who was present at that meeting? A. Well, the only one I can name is, I think, John Kelly.

Q. Is he living or dead? A. He is living. I think Broderick was present—that is, I don't know whether Broderick had resigned then or not. I know that a man by the name of McCartney was present.

Q. David Nelligan was alive then? A. He was alive; yes, sir. When I first made the demand he was alive.

Q. How long was that before his death? A. Well, it may possibly have been a year.

Q. You knew David Nelligan? A. I did.

241 Q. You knew him very well? A. Yes; as well as I know you, and that is pretty well.

Q. Did you see David Nelligan about his default at all personally? Did you speak to him about it? A. I never spoke to him about it until after his wife was down at my office.

Q. When do you remember that you called the attention of the board again to this default? A. I think it was possibly five or six months more.

Q. Was Mr. Nelligan alive at that time? A. I do not recollect; I cannot positively say.

Q. Did Mr. Lynch make any reply to what was said when you called the attention of the board to the matter? A. Yes, sir.

Q. What did he say? A. The second reply that he made was that the extension act was passed, and the District government would take that property and pay him a pretty good price, and not to be in a hurry.

Q. This was in what year? A. That was in 1890 or 1891. No; I think that was in 1892 or '3.

Q. Then it must have been more than five or six months after the first occasion? A. Oh, yes; more than that.

Q. More than a year, perhaps two years, after you had first called the attention of the board to the default? A. It may be; yes.

Q. Nothing was said in the meantime about it? A. The only thing said between Mr. Lynch and myself was, "Don't be in
242 a hurry, now. Nelligan has got plenty of security. Just let it be. He is going to settle pretty soon."

Q. Was Nelligan alive at that time when this reference was made to the extension act? A. No, sir; I don't think he was. That is why the extension was still extended—because she was a widow, and her nephew, Secretary Lynch, claimed the leniency of the board for her.

Q. The extension act to which you refer was the act which was to extend 8th street? A. Vermont avenue; yes, sir.

Q. And this property was supposed to be embraced in that extension? A. That is what Lynch told me.

Q. After that when was the matter up before the board? A. Well, it may have been a year or two, because he made an explanation there that the property could not be sold then on account of the extension, and I don't think it was referred to afterwards for possibly two years or maybe three.

Q. And after the expiration of those two or three years when was the matter again called to the attention of the board? A. Well, the matter was called to the attention of Lynch afterward several times, and he finally told me, on one occasion, that there was plenty of live stock, live shares, to secure her indebtedness. Says I, "Who

are they, or who has got them?" "Well," he says, "a woman by the name of Mary Halpin." Says I, "She has not been a member of the association for over two years; she withdrew her stock."

243 It was that which caused me to suspect that he had done something wrong, and then I commenced to make inquiries about Nelligan.

Q. What do you mean by Lynch saying that there was plenty of live stock in the association to secure the indebtedness? A. I mean he lied to the association about that live stock. That live stock is commonly called money paid in by stockholders and not withdrawn.

Q. In other words, you understood that there were other people, stockholders of the association, who had deposited money in the association, who would give their certificates or loan their certificates as security for this indebtedness? A. No, sir. I did not understand it.

Q. Then I do not understand it. I want to understand it. A. Understand me, I said that when he told me that there was live stock to secure it, and then named the party, I knew he was telling what was not so.

Q. But before that he had said that there was plenty of live stock in the association to secure the Nelligan matter. A. Yes, sir.

Q. That was people to whom the association owed money as depositors whose money could be held to secure the Nelligan indebtedness? A. Exactly; provided they would transfer it to Nelligan.

Q. Provided they were willing to permit it to be so used? A. Yes, sir.

244 Q. That is what I thought; I understood you right. He had made that representation before he gave you the name of Mrs. Halpin, had he not? A. No, sir.

Q. Do you recollect any other occasion when you called the attention of the board to this condition of the Nelligan loan? A. I recollect then that as soon as I found that out I wrote to Mrs. Nelligan. It was possibly over twelve or fifteen months before I could find out where she was. I finally located her at Atlantic City and wrote to her, and I then reported to the board the facts, and the board were about to advertise the property and put the security in the hands of a trustee to sell, and it has since been in litigation.

Q. You have known the Nelligans for a good many years, as you say? A. I have known old man Nelligan; I never saw his wife before the time she visited me at the office, but I have known Nelligan for a good many years—maybe twelve or fifteen years.

Q. And you knew that Mr. Lynch was her nephew? A. I certainly did.

Q. She was a sister of Mr. Lynch's father? A. No; his mother, I think.

Q. Did Mrs. Nelligan have other relatives in the city? A. Oh, yes, sir; I presume so. I don't know.

Q. You do not know? A. I do not know.

245 Q. Did you inform the board that you desired to ascertain the whereabouts of Mrs. Nelligan? A. I did.

Q. Nobody knew her? A. Nobody knew where she went.

Q. As I understand you, Mr. Daly, the board waited about nine years after the default of Mr. Nelligan before they attempted to enforce this security? A. Yes, sir; because the secretary——

Q. No; I am not asking you that. I simply want to know how long they waited. A. All right, sir.

Q. Now, when was it, Mr. Daly, that Lynch was finally deposed from the secretaryship; what month and what year? A. I think it was in June or July, 1898.

Q. In July, 1898? A. Yes; June or July, 1898. I know it was after the annual report of 1898, because that created the disturbance.

Q. Now, as I understand it, Nelligan, the old man, had made payments down at the meetings on several occasions? A. Yes.

Q. You did not miss him at those meetings in making payments, did you? A. Oh, no; I did not miss any of the stockholders.

Q. And you did not think it was necessary to call his attention to it personally after he had defaulted for four or five months? A. Not from the excuse the secretary made for it.

Q. You accepted the excuse the secretary made? A. Yes, sir; I will say right here that we had such confidence in the secretary that whatever statement he would make we would rely on it, until we found out he was a defaulting rascal.

Q. Mr. Lynch used to bring money, you say, to the meetings, like all the other directors did? A. Yes, sir.

Q. It was a common practice of the directors? A. It was a common practice of stockholders and their children and their neighbors.

Q. But the directors and the officers who used to attend the meetings used to bring down the money of the other stockholders? A. Yes.

Q. And bring their books? A. Yes, sir; sometimes they would and sometimes they would not bring them.

Q. And this practice had continued on for a long number of years? A. Yes.

Q. You knew that Mr. Lynch was receipting in these books, the stockholders' books, for the payments that the stockholders made? A. Why, certainly; because he was receipting right there in my presence.

Q. And he did that for a long number of years? A. Yes, sir.

Q. In fact, Lynch receipted more in the stockholders' books than you ever did, did he not? A. Oh, yes. My custom used to be to count the money, report it to Lynch, and charge it on my roll book.

247 Q. And rely on him to receipt it to the stockholders?

A. Yes; because it would be receipted on my book, and if the money was not receipted on my book the stockholders would not get credit for it.

Q. Now, you say that outside of the board of directors' meetings you attempted personally, with Lynch, to get him to settle this Nelligan matter, several times? A. Yes, sir.

Q. Why did you endeavor to get Lynch personally to settle the matter several times? A. Well, as secretary of the association and knowing that he was a friend and nephew of Mrs. Nelligan.

Q. Who was the officer who issued the books, the pass books, as they called them, to the stockholders and people who paid money into the association? A. The secretary was supposed to be. Those books would be at the association hall and be issued there, when the money would be paid.

Q. Would you keep a list of the new stockholders and depositors of each respective meeting? A. Yes, sir.

Q. In that way you knew just the number of new stockholders who had become such at a meeting? A. Yes, sir, and they could not become stockholders unless they paid me the money.

Q. Did not Mr. Lynch give you the names of various people to whom he had issued books at some place outside of the regular meeting, pay into your hands the money which they had deposited with him and for which he had issued them a book, and you give them credit on your books? A. No, sir; they would have to bring the books to the association, and I would have to see that the
248 money was paid and they got the books before I entered them up on my roll books.

Q. Well, you had a great deal of confidence in the secretary, had you not, as you have just testified? A. Yes, sir.

Q. Then do I understand you to say that you never recognized any person to whom Mr. Lynch issued a book at his house, but whose money you had not received, as a stockholder? A. I did not recognize them until I saw the book, and the book was brought to the association. I did not allow Lynch any privilege except what the constitution allowed him.

Q. But you knew, as a matter of fact, that he would issue books to people and bring their money down to the meeting, and you would require the books to be brought to you afterwards? A. Yes; I would require the people to bring the books to me so I could credit them on my roll book.

Q. Whose duty was it to go over the papers in the possession of the secretary and to report to the board of directors that the securities were all intact and in the possession of the secretary and duly accounted for? A. It was supposed to be the duty of the finance committee.

Q. Now, the finance committee were supposed to examine the books of the treasurer and the books of the secretary, from which they could see who were borrowers from the association, and in what condition their accounts were, and they could also ascertain from the secretary, by examining his papers, whether the securities representing those loans were all intact and in his possession,
249 could they not? A. It was their duty to examine the books of the secretary and treasurer, and I do not know whether it was their duty to examine the securities in the hands of the secretary or not. I cannot say. I do not think they ever reported that fact.

Q. They could have reported it, could they not? A. Undoubtedly, they could.

Q. The secretary was bonded to the association in the sum of \$2,000? A. Yes.

Q. What was that for? A. For the faithful fulfillment of his duties as secretary.

Q. Have you got that bond? A. No, sir.

Q. What has become of it? A. I don't know what became of it. It was reported to us as worthless.

By Mr. LESTER:

Q. By whom? A. By Lawyer Gordon.

By Mr. TOBRINER:

Q. I mean have you got the paper? A. No; I have not got it.

Q. Who has it? A. I do not know.

Q. Who had it last? A. The president of the association has it, I suppose, because he was the custodian of the treasurer's bond and the secretary's bond. The secretary was custodian of all the
250 other papers and securities belonging to the association.

Q. You remember Mrs. Nelligan calling upon you about 1889 or 1890, do you not? A. I do.

Q. Where was your office then located? A. On Louisiana avenue between 8th and 9th. I think it was 917.

Q. You were in the butter business? A. I was in the butter business—butter, eggs, and cheese.

Q. Who was present at that interview, Mr. Daly? A. Well, there was a young man at work for me; I tried to find him, too, and I could not. I want you to understand that.

Q. What did she want to know from you? A. She wanted to find out from me in what way she could settle up. I told her to go to the secretary and get a statement from him, bring the amount of that statement to me and I would receipt it, and she could go to the attorney of the association and get her release.

Q. How do you happen to remember that visit? A. Because I recollect it very well, very plainly. She was not the only woman who came down there and wanted to find out that information, and I thought it my duty as treasurer to inform her.

Q. I simply want to know how you fix and recall the visit, that was all. A. I recollect the occasion of the visit, that is all.

251 Q. Can you tell us about what month that was? A. It was in the fall of the year.

Q. Did she tell you that she had sold her other property? A. She told me nothing.

Q. She came there to see you about making a payment? A. Yes; and asked me how, and I gave her the usual instructions.

Q. At that time the Nelligans had been in default for how long? A. Well, for possibly two years; maybe two years.

Q. And during that time Mr. Lynch had been making these excuses, as you say? A. Yes, sir.

Q. Did you ask her why they had been in default so many years? A. I did not. I thought when she came there to try and get the information that she meant to settle up right away. That was my impression.

Q. Subsequently you saw her husband? A. Yes.

Q. Within a short time? A. Yes; ten or twelve days. I met him on the same avenue, on Louisiana avenue. He was going west and I was going off to the bank.

Q. You told him that his wife had been down to see you? A. I did.

Q. Did you ask him when he was going to make a settlement?

A. I did not.

252 Q. You knew that he had been in default for over two years or about that time? A. I did.

Q. Did you call that to his attention? A. I did not, because I supposed he knew it.

Q. And after Mrs. Nelligan had called to see you about making a settlement, which you supposed would be made immediately, you did not thereafter, when they did not make any settlement, call it to their attention or his attention? A. No; because Lynch would make the excuses for them all the time.

Q. Can you recall any other instance in which the building association waited for nine years for a repayment of the money loaned by them? A. None, except the excuses made by Lynch.

Q. Can you recall any other instance in which the building association waited as long as one year? A. Oh, there were several members; not that long, but there were several men.

Q. As long as a year? A. Oh, yes; two years, three years, and four years.

Q. Were they paying at all during that time you indulged them? A. Some of them did and some did not. We really would not force a sale on anybody where we thought the security was ample, without giving them ample time to try and realize it.

Q. You say that your recollection is that Mr. Barnard, representing Mrs. Powers, settled up her indebtedness? A. Yes, sir; that is my recollection.

253 Q. Miss Powers owed the building association? A. Yes, sir.

Q. So did her mother, also? A. Yes, sir.

Q. Two different loans? A. Two different loans.

Q. On two different pieces of property? A. Yes, sir.

Q. Your recollection is that Judge Barnard settled them both? A. Yes, sir.

Q. At the same time? A. No, sir; at different times.

Q. When was Miss Mary Powers' loan settled? A. Miss Mary Powers? It was settled on the 7th of April, 1894, I think.

Q. You have gone over the books lately for the purpose of refreshing your memory, have you not? A. I went over the books for the sake of finding out the date that her settlement was made.

Q. When was her mother's indebtedness settled? A. It was five or six months after that.

Q. Where was the settlement made of Miss Powers' indebtedness?
A. I think it was made in Judge Barnard's office.

Q. And where was Mrs. Powers' settlement made? A. Judge Barnard brought it down to my office.

Q. Did you receipt for moneys paid into the association at your house? A. Yes.

Q. You permitted people to come there with their books?
254 A. Not many.

Q. But you permitted them to do it? A. I permitted one or two to come there. I finally told them that they had to go to the association hall to pay.

Redirect examination.

By Mr. LESTER:

Q. You used the expression that "you tried to get Mr. Lynch to settle the Nelligan affair?" A. Yes, sir.

Q. How did you expect them to settle it? A. Well, I expected him to go to his aunt and insist upon her making the settlement.

Q. You do not mean you expected him to pay the money? A. Oh, no; no. I knew he had not it.

Q. There is one thing I forgot; I call your attention to "Exhibit M. N. No. 7," on the part of the complainants. Do you recognize that as Mr. Lynch's handwriting? A. Yes, sir.

Q. Look on the inside. Is all of that his handwriting? A. Yes, sir; that is his handwriting.

Q. On 'the back of it, is any part of it his handwriting? A. "David Nelligan, March 19th, 1897."

Q. The rest is not? A. The rest is not.

Q. Now look at "Exhibit M. N. No. 8," on the part of the complainant, on the face of it, dated "Washington, D. C., April
255 19th, 1890." Look on the front of that and tell us whether that is Lynch's handwriting or not. A. That is Lynch's handwriting.

Q. Everything on there? A. Everything on there.

Q. Look on the back and see if anything is in his handwriting.
A. That is his handwriting—that "David" there is his handwriting.

Q. Is any other part of it his handwriting? A. No, sir; it seems as if there must be a piece torn off there.

Recross-examination.

By Mr. TOBRINER:

Q. What books did Mr. Lynch keep as secretary? A. He kept the roll book; that is the only book that we were governed by. They were governed by my book principally to settle up the indebtedness of the association—that is, the roll book and his roll book.

Q. Did he keep no ledger accounts? A. He never kept a ledger account since 1887 or 1888. He did not keep any minutes. He

kept the minutes, but they were on slips of paper, and what he did with them we could not find out.

Q. What books would the account of a person owing the association or a depositor of the association be made up from? A. From the roll book and from the book that they held in their possession.

Q. After Mr. Lynch was deposed, you had some experts go over his books, I believe? A. Yes, sir.

Q. What were the names of those gentlemen? A. Mr. D. P. Morgan and Mr. Price.

Q. Clarence Price, at the Central national bank? A. Yes; they were the two, assisted by the secretary.

Q. Mr. Becker? A. Yes, sir.

Q. The witness who has been on the stand? A. Yes, sir.

TIMOTHY D. DALY,
By the Examiner, by Consent.

(Counsel for the defendants thereupon announced their testimony closed.)

257 *Memorandum.*

For Exhibit T. D. Daly Nos. 1 and 2, see Exhibit T. D. Daly No. 1, page 23.

EXHIBIT T. D. DALY No. 3.

Organized March 31, 1884.

Reg. No., 4746.

One share.

Eleventh series, May, 1895.

Second Workingmen's Building Association of the District of
Columbia

This is to certify that Daniel Sannon is entitled to one share of stock of the Second Workingmen's Building Association of the District of Columbia, subject to the provisions of the constitution.

City of Washington, July 10, 1895.

DENNIS FOGARTY,
Vice-President.

JOHN T. LYNCH, *Secretary.*

258 EXHIBIT T. D. DALY No. 4.

No. 1239.

WASHINGTON, D. C., April 23, 1897.

Treasurer Second Workingmen's Building Association of the
District of Columbia

Pay to the order of Edwin C. Goss two hundred and fifty-three $1\frac{20}{100}$ dollars for withdrawal on ten shares of stock paying 24 months in 11th series.

\$253.20.

DENNIS FOGARTY, *President.*

Attest: JOHN T. LYNCH, *Secretary.*

Endorsed: Edwin C. Goss, John T. Lynch.

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EXHIBIT T. D. DALY No. 5.

W No. 1228. WASHINGTON, D. C., Feb. 23, 1897.
 O Treasurer Second Workingmen's Building Association of the
 R District of Columbia
 K
 I Pay to the order of Morgan McInerney two hundred and sixty-
 N one ¹⁰⁰/₁₀₀ dollars for withdrawal on 10 shares of stock paying
 G \$249.50 in the eleventh series.
 M \$261.60.
 E DENNIS FOGARTY, *President*.
 N Attest:
 ' JOHN T. LYNCH, *Secretary*.
 S Endorsed: Morgan McInerney, John T. Lynch.

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Stipulation as to Exhibits.

Filed October 1, 1901.

In the Supreme Court of the District of Columbia.

JEREMIAH F. NELLIGAN ET AL. }
 vs. } Equity. No. 20332.
 ELON A. WOODWARD ET AL. }

It is hereby stipulated and agreed by and between counsel for the respective parties that in any trial of this cause it shall be considered as proven and as part of the evidence adduced herein on behalf of the complainants that the accounts of subscriptions to stock and payment of dues on account of stock and loans between the Second Workingmen's Building Association and its stockholders were and are contained in books kept by the secretary and treasurer of said association respectively, the said books being specially prepared and arranged for that purpose; that the exhibit marked "A," hereto attached, is a copy of one of the pages of the book kept by the secretary, and that the exhibit marked "B," hereto attached, is a copy of one of the pages of the treasurer's book, the form of said books being similar in arrangement to said Exhibit "A;" that the names of the stockholders in the books of the said secretary and treasurer were arranged generally alphabetically at the beginning of every six months, so that payments made by the stockholders could be entered as they were made monthly, or otherwise, the amounts entered in the respective columns being the amounts paid into said association by the stockholder, whose name is set opposite during the month at the head of the column. When there was no payment during the maturing month no entry was made, but

261 the space for such month remained blank for the purpose of indicating that no payment had been made by the stock-

holder during said month. Where payment for more than one month was made, such appears in one entry. The entries in the secretary's book were made by the secretary, and the entries in the treasurer's book were made by or under the supervision or direction of the treasurer; that the name of David Nelligan appears as a stockholder in the secretary's said books and as making certain payments into said association during various months, the first payment being credited to him in the column for the month of October, 1886, and the last in the column for the month of September, 1889; that said Nelligan's name is entered as a stockholder in said books from April, 1886, to September, 1891, both inclusive, and thereafter does not appear in said books at all; that after the month of September, 1889, whenever the name of David Nelligan appears in the secretary's books there are no entries opposite said name whatsoever.

That the name of David Nelligan appears as a stockholder in the treasurer's book as making certain payments into the said association, the first being entered in the column for the month of October, 1886, and the last in the column for the month of September, 1889; that the said Nelligan's name was entered as a stockholder in said books from April, 1886, to September, 1891, both inclusive, and thereafter does not appear in said books; that after the month of September, 1889, whenever the name of David Nelligan appears in the treasurer's book there are no entries opposite said name whatsoever;

262 that in none of the said above-mentioned books does the name of David Nelligan appear after the month of September, 1891; that exhibits marked "C" and "D" are correct statements taken from the secretary and treasurer's account books, showing the entries made in connection with the account of David Nelligan.

It is further stipulated and agreed that the original of said secretary and treasurer's books shall be produced at any hearing of this cause if required by the court.

It is further stipulated and agreed that Timothy D. Daly, a witness heretofore called by defendants, would further testify on behalf of defendants (if called) that he, the said Daly, each six months copied into his treasurer's book the names of stockholders from the secretary's book or a list furnished him by the secretary; that the check-marks in each of said books appearing were placed therein by a committee examining said books and not by the secretary or treasurer, and that the name of David Nelligan, appearing in said treasurer's book after September, 1891, was put therein by said Daly after, to wit, A. D. January, 1897; that the above may be used as testimony as if said Daly had duly appeared and so testified.

September 28th, 1901.

LEON TOBRINER,

Solicitor for Complainants.

WHARTON E. LESTER,

Solicitor for Defendants.

	Fourth fiscal year.	1887. Apr. 13.	May 11. 38. Month.	June 8. 39. Month.	July 13. 40. Month.	Aug. 10. 41. Month.	Sept. 8. 42. Month.	
	Stockholders' names.							
174	Amounts brought up.....	1,633 99	1,737 74	1,857 61	2,741 80	2,070 80	1,931 15	
175	McNaney, Edward.....	10	10	10	10	10	10	
176	Morrissey, Hannah.....	5	5	5	5	5	5	
177	Murphy, John T.....	10	10	10	10	10	10	
178	McCarthy, Catherine.....		11	22 55	11	11	11	
179	McNalley, Annie.....							Withdrew 10 shares in May.
180	McLaughlin, James.....	20	20	10 1	10	10	10	
181	McLamey, Patrick.....	5	5	5	5	5	5	
182	McArdle, James.....	20	20	20	20	20	20	
183	McAuliffe, P. F.....							Withdrew 20 shares in June, 1 series.
184	McGilton, James.....	20	20 75	40	20	20	20	
185	McCarthy, Daniel.....							
186	Miller, Emma.....	4	4		8	4		
187	McArdle, Peter.....	5	10		5	5	5	
188	Malone, John.....							
189	Mulcahey, Thomas.....	20	20	20	20	20	20	
190	McGrath, William.....	5	5	5	5	5	5	
191	Martin, Mary.....	10		10			10	See Mary Martin account, ledger.
192	McNaney, Bridget.....	5	5	5	5	5	6	Withdrew 4 shares in June.
193	McElligot, John.....	4	4					
194	Murray, Neal T.....	20	20	20	20		69	
195	McDermott, Henry.....		10	10	10	10	10	
196	McGaw, Mrs. Mary.....		9	18	18	18	18	
197	Nelson, Honora.....							
198	Norton, Catherine.....				10		10	
199	Noonan, John.....	42	42	42	42	42	42	Withdrew 5 shares in May.
200	Nolan, Sarah.....			27 56				
201	Nelligan, David.....	25	10		10	12	12	
202	Nelligan, Annie.....		10		10	5	5	
203	O'Brien, Michael.....	10	10	10	10	10	10	
204	O'Brien, Mary T.....	4						Withdrew 4 shares in June.
205	O'Connell, Jeremiah.....	15	15	15	15	15	15	
	O'Brien, Thomas.....					26		
	Amounts forward	1,892 99	2,033 49	2,162 72	2,020 80	2,338 80	2,258 15	

Fiscal year.	1899. Apr. 10.	May 8.	June 12.	July 10.	Aug. 14.	Sept. 11.
Stockholders' names.	Month.	Month.	Month.	Month.	Month.	Month.
McCartney, Annie C	10	10	10	10	10	10
McNaney, Bridget.....	10 25	5	5	.....	10 25	5
McGilton, James.....	20	20	20	20	20	20
McDermott, Henry.....	10	10	10	10	10	10
McGaw, Mary	18	10 50	18	21	15	19
McCarthy, Johanna.....	Out.					
Murphy, John.....	.....	.....	10	5	5	5
Mangan, John 5 mo..	.....	.....	.....	15	5	5
					50	
Maloney, Mich'l.....	.....	.....	.....	.....	50	
Nelon, Honora.....	37	.....	.....	5		
Norton, Catherine.....	.....	5	10	5	.....	10
Nelligan, David.....	12	.....	24	12	12	12
O'Brien, Michael.....	10	10	10	10	10	10
O'Connell, Jeremiah..	8	8	8	8	8	8
O'Brien, Thomas.....	5	5	5	.. ....	10	5
O'Neil, Sarah.....	6	6	6	6	6	6
O'Brien, Annie E.....						
O'Leary, John	20	.....	10	10	10	10
O'Connor, Mary Sullivan....	12					
O'Connor, John .....	.....	5	.....	15	5	
O'Neil, Mary H	4	4	.....	8	4	
O'Leary, William.....	.....	8	8	8	.....	16
Powers, Mary .....	.....	20	18	18	18	18
					6*	
Powers, Mary A	18	18	18	18	18	16
Powers, Mrs. J. D.....	.....	30	.....	10	10	
Quill, Ann	5	5	5	5	.....	1
Quigley, Hugh.....	20	20	20	20	20	20
Roche, John	6	6	6	6	14	14
Riordan, Jennie.....	15	15	15	15	15	15
	10					
Ready, John	70	80	80	80	80	80
Riley, Susan.....	5	5	5	5	5	5

[* In pencil in copy.]

Secretary's books above mentioned show Nelligan's account as follows :

Name first appears—

1886.
Ap'l.....
May

June.....
July

Aug.....

Sept.....	
Oct. 14	15.08
Nov.....	
Dec.....	
1887.	
Jan'y	
Feb'y	
March	
Ap'l	25.00
May	10.00
June	
July	10.00
Aug.....	12.00
Sept.....	12.00
Oct.	12.00
Nov.....	12.00
Dec.....	67.52
1888.	
Jan'y.....	
Feb'y	
March.....	
Ap'l.....	
May	
June	
July	
Aug.....	72.00
Sept.....	12.00
Oct.....	
Nov.....	12.00
Dec.....	12.00
1889.	
Jan'y	12.00
Feb'y	12.00
March	7.25 (see Oct.)
Ap'l	12.00
May	
June	24.00
July	12.00
Aug.....	12.00
Sept.....	12.00
Oct.....	
Nov.....	
Dec.....	
1890.	
Jan'y.....	
Feb'y	
March.....	
Ap'l.....	

May	
June.....	
July.....	
Aug....	
Sept.....	
Oct.....	
Nov.....	
Dec.....	
1891.	
Jan'y.....	
Feb'y	
March	
Ap'l	
May.....	
June.....	
July.....	
Aug.....	
Sept. (No more from that time on.)	

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EXHIBIT "D."

Treasurer's books above mentioned show Nelligan's account as follows:

1886.	
April.....	
May	
June.....	
July.....	
Aug.....	
Sept.....	
Oct.....	15.08
Nov.....	
Dec.....	
1887.	
Jan'y	
Feb'y	
M'ch.....	
Ap'l.....	
May	10.00
June	
July.....	10.00
Aug.....	12.00
Sept.....	12.00
Oct.....	12.00
Nov.....	12.00
Dec..	67.52
1888.	
Jan'y	

Feb'y	
M'ch	
Ap'l	
May	
June	
July	
Aug	72.00
Sept	12.00
Oct	
Nov	12.00
Dec	12.00
1889.	
Jan'y	12.00
Feb'y	12.00
M'ch	7.25
Ap'l	12.00
May	
June	24.00
July	12.00
Aug	12.00
Sept	12.00
Oct	
Nov	
Dec	
1890.	
Jan'y	
Feb'y	
M'ch	
Ap'l	
May	
June	
July	
Aug	
Sept	
Oct	
Nov	
Dec	
1891.	
Jan'y	
Feb'y	
M'ch	
Ap'l	
May	
June	
July	
Aug	
Sept. (Does not appear after Sept. 1, 1891.)	

Filed November 27, 1901.

In the Supreme Court of the District of Columbia.

FRANK J. NELLIGAN ET AL.	} No. 20332. Equity.
<i>vs.</i>	
ELON A. WOODWARD ET AL.	

This cause coming on to be heard upon the pleadings and evidence herein, and having been duly argued and by the court considered, it is this twenty-seventh (27) day of November, A. D. 1901, adjudged, ordered, and decreed that the indebtedness secured by the deed of trust executed by David Nelligan and Mary Nelligan, his wife, to the defendants Woodward and White, duly recorded among the land records for the District of Columbia in Liber 1186, folio 8 *et sequitur*, the seventeenth (17) day of May, A. D. 1886, conveying all those certain pieces or parcels of land situate and being in the county of Washington, District of Columbia, and known and distinguished as lots numbered one (1) and two (2) of Johnson's subdivision of certain lots in Wright and Dole's subdivision of parts of Pleasant Plains, referred to in the fourth paragraph of complainant's bill, has been discharged to the Second Workingmen's Building Association of the District of Columbia, and that the said defendants, Elon A. Woodward and James White, as trustees, do execute and deliver a release of the said real estate from the said deed of trust to the complainants, Jeremiah F. Nelligan, John J. Nelligan, and David A. Nelligan, heirs-at-law of the late David Nelligan,

268 within thirty (30) days from the date thereof; that in default of such execution a duly attested copy of this decree be recorded among the land records for the District of Columbia in lieu thereof, to operate as such release.

It is further adjudged, ordered, and decreed that the respective parties herein pay their own costs. And from the above decree the said defendants hereby, in open court, note an appeal to the Court of Appeals, which is hereby allowed, and the penalty of the bond to be given by said defendants, that said appeal shall operate as a super-sedeas, is hereby fixed at one hundred and fifty dollars.

A. B. HAGNER,
Asso. Justice.

omit from this deed of trust, bond, abstract of title, certificate, etc., of commissioner.

Depositions of witnesses on behalf of complainant, taken before J. J. Canty; omit of this index, certification, and caption.

Of Exhibit No. 1 state only the account with Mary Bresnaham, as shown.

Omit Exhibit No. 2; state in lieu thereof that the book is similar to Exhibit No. 1, and shows the account with Thomas Barry from April 9, 1884, to June 8, 1898, both inclusive—in all, 173 payments—all the receipts for which are signed by Lynch except three, which are receipted by Daly; those June 11, 1884, January 14, 271 1885, February 10, 1886, and one January 3, 1886, by some one whose signature cannot be made out.

Omit Exhibit No. 3; state that the same is a book showing the account of Mary Lynch, with fifty-eight payments, extending from July 9, 1890, to October 11, 1897, all receipted by Lynch.

Omit the account of payments by John Mangan, at page 54 *et seq.*; state that the same is a copy of the book of said John Mangan, and shows sixty-five payments, from May 8, 1889, to April 10, 1894, all receipted by Lynch.

Omit the account of payments by Mangan, at page 57 *et seq.*; say the same is a copy of the book of said John Mangan and shows an account with Mangan of forty-nine payments, from February 21, 1895, to February 7, 1899, those from February 21, 1895, to October 12, 1898, forty-five payments, receipted by Lynch; payments of November 9, 1898, and February 7, 1899, receipted for by Daly; those of December 14, 1898, and of January 11, 1899, not signed.

Omit account of payments by Mary A. J. Powers, at page 66 *et seq.*; say that the same shows the account from July 9, 1884, to December 9, 1893—in all, 107 payments—the first three entries of which do not show to whom the same were paid. Payments made from November 13, 1884, to March 8, 1892, inclusive, are receipted by Daly, excepting payment of March 11, 1886, which does not show by whom received, and May 9, 1888, and June 13, 1888, which are receipted by Lynch. The balance—fourteen—are receipted by Lynch.

272 MEM.—Show signature of Lynch to the book.

Omit Exhibit No. 4; state that the same is a book similar to Exhibit No. 1, and showing fourteen payments by Thomas Creamer, from May 10, 1893, to June 18, 1894, all signed by Lynch.

Omit Exhibit No. 5; say that the same shows the account of Edwin C. Goss, and twenty-two payments, from May 8, 1895, to March 12, 1897, all signed by Lynch.

Depositions for defendant; omit index, examiner's certificate, caption, and Exhibits 1 and 2; state that said exhibits are pass books similar to that filed with defendant Daly's answer; insert the other exhibits.

Stipulation of counsel; show Exhibits A and B.

Decree.

Order of severance.

It is hereby stipulated and agreed that the original of any exhibits or copies in original record may be used at hearing.

WHARTON E. LESTER,

Attorney for Appellants.

LEON TOBRINER,

Attorney for Appellees.

273 UNITED STATES OF AMERICA, }
District of Columbia, } ss :

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 272, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 20332, equity, wherein Jeremiah F. Nelligan *et al.* are complainants and Elon A. Woodward *et al.* are defendants, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe
Seal Supreme Court my name and affix the seal of said court, at
of the District of the city of Washington, in said District,
Columbia. this 10th day of January, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1172. Elon A. Woodward *et al.*, appellants, *vs.* Jeremiah F. Nelligan *et al.* Court of Appeals, District of Columbia. Filed Jan. 22, 1902. Robert Willett, clerk.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

MAR 5 - 1902

Robert W. Bell
CLERK

IN THE
Court of Appeals of the District of Columbia
JANUARY TERM, 1902.

No. 1172.

ELON A. WOODWARD *ET AL.*, APPELLANTS,

vs.

JEREMIAH F. NELLIGAN *ET AL.*, APPELLEES.

BRIEF ON BEHALF OF APPELLANTS.

WHARTON E. LESTER,
Attorney for Appellants.

IN THE
Court of Appeals of the District of Columbia

JANUARY TERM, 1902.

No. 1172.

ELON A. WOODWARD *ET AL.*, APPELLANTS,

vs.

JEREMIAH F. NELLIGAN *ET AL.*, APPELLEES.

BRIEF ON BEHALF OF APPELLANTS.

STATEMENT.

The original bill in this case was filed April 11, 1899, by appellees, heirs and children of David Nelligan, deceased, against appellants Woodward and White, as trustees under a certain deed of trust hereinafter referred to, and against the other appellants, as directors and members of the **Second Workingmen's Building Association**, a voluntary unincorporated association, and as representing the remaining shareholders, who were too numerous to make parties, and prayed that said trustees be restrained from enforcing said trust, and directed to execute a release thereof.

This building association was organized in 1884, and in June, 1898, went into voluntary liquidation. From its organization until the present time Timothy D. Daly has been its treasurer, and from its organization until October, 1898, at which time he was dismissed, John T. Lynch, cousin of appellees, was its secretary.

David Nelligan became a member of said association, and

in May, 1886, borrowed \$525 and gave his bond acknowledging his indebtedness to "Timothy D. Daly, treasurer," in the sum of two thousand dollars (\$2,000), "to be paid unto Timothy D. Daly, treasurer, as aforesaid, or to his successor in office" and conditioned for the payment of said sum and such further advances as might be thereafter made to him by said association "unto Timothy D. Daly, treasurer, as aforesaid, or to his successor in office," payments to be made upon the *second Wednesday of each month*, "in accordance with the provisions of the constitution," and secured the same by a deed of trust, thereby conveying certain land in the District of Columbia to appellants Woodward and White, as trustees, for the purposes therein set forth.

Thereafter Nelligan received other advances from the association, and on the 19th day of April, 1890, was indebted to it in the sum of \$849.77.

Lynch, the secretary, in accordance with the constitution, had in his possession certain books, papers, etc., including said bond and deed of trust. Appellees contend that on April 19, 1890, their mother Mary, Nelligan's wife, paid said indebtedness by handing Lynch, while in Mr. Tobriner's office, about \$1,500, and telling him: "Here, John, you take your money out of here, and give the balance to your Uncle Dave" (Rec., p. 17). For this alleged payment no receipt or acknowledgment was given. Appellees have in their possession said deed of trust and bond, which they testify they found among their father's papers. It is not shown from whom, how or when, if ever, their father received them, and the only evidence of such payment is the present possession by appellees of the trust and bond and the testimony of Mary Nelligan. The trust was recorded but never released. The bond was never canceled. The building association never received the money. Neither its directors nor anyone connected with the association ever knew of such alleged payment or claim of pay-

ment until shortly before the filing of this suit. The amount due now probably exceeds \$1,200.

The constitution of the building association provides, Art. 5: "*It shall be the duty of the treasurer to receive all moneys paid into the association;*" and Art. 13: "*Each stockholder shall pay a monthly installment of One Dollar per share on the second Wednesday of each month.*" Payments of dues were invariably made to the treasurer at the regular monthly meetings of the association, held in accordance with the constitution on the *second Wednesday* of each month, when both the treasurer and secretary would be present, the treasurer receiving all moneys, the secretary checking such receipts and generally placing his initials in the pass-books to signify the receipt by the treasurer of the correct amount. These payments were made by the stockholders handing the money directly to the treasurer, or to the secretary to hand to him, and were made by stockholders or anyone acting for them, the secretary and other directors frequently bringing money for members who could not conveniently attend (Rec., pp. 84, 86, 93, 100, 103).

Nelligan He paid nothing after April, 1890. His name was left off the *roll book* of the secretary after September, 1891. The treasurer, whose duty it was to keep account of money paid in, not general accounts with members, did not keep on his *roll book* the name of the non-paying member. Some time in 1890, probably shortly prior to April, Nelligan's wife had been told by the treasurer that payment of the amount advanced should be made to him, and that he would give her a receipt which would enable her husband to obtain a release of the trust (Rec., p. 111). Appellees contend that all of the payments of dues made by Nelligan were made to Lynch at his private house, he giving no receipt or acknowledgment therefor. They state that Lynch attended to everything connected with the building association for them, and show that they allowed Lynch to disburse their money

for them without rendering any account thereof (Rec., p. 18). It does not appear that David Nelligan or his wife knew on April 19, 1890, that Lynch had in his possession said trust and bond. Some time after that date (six months or a year) Nelligan was told that the building association had not received his money (Rec., p. 18). He did nothing. His wife had such notice and says she went to see the treasurer about it. Daly denies this (Rec., p. 111). She says she received no satisfaction from Daly, whereupon she dropped the matter and never mentioned it again to any one for fear of injuring Lynch's reputation (Rec., p. 23), for she thought probably Lynch had used the money in his own business and would make it good some other time (Rec., p. 22). She thought this before she saw Daly. Later, appellee Frank Nelligan became suspicious and made inquiries of Lynch, whose statement satisfied him (Rec., p. 25).

Appellees attempt to show that Lynch had received dues at his house from some few other members of the association at various times, (though this does not appear to have been known to Nelligan) and that Lynch paid money for the association to several members, though it is easily seen that in each instance the member receiving such money had made Lynch his agent.

The appellants show that neither the building association nor its proper officers ever received any part of the money so claimed to have been paid; that they did not know until 1898 that the deed of trust and bond were not in their possession, (if it was not); that they made frequent inquiries of Lynch about obtaining a settlement of the amount from Nelligan whom he, Lynch, represented. They give a satisfactory explanation for not enforcing the trust, and show that in receiving money as dues from other members, Lynch acted as agent for the members and not for the association; that he did what was practically being done by all the directors, and by many other stockholders, namely,

accommodating his friends and neighbors living in his neighborhood by carrying their money to the association meetings for them; that they held regular monthly meetings on the days when payments of dues were to be made that payments were invariably made to the treasurer, and never to the secretary, (for money handed to the secretary to be passed to the treasurer as explained is not payment to the secretary). They show that Nelligan was familiar with the methods of building associations of which he had apparently been a member for nearly ten, certainly for more than five years; that he had a copy of the constitution and agreed to be bound by its terms, and therefore knew that Lynch had no authority to receive any money. Lynch appears to be a fugitive from justice.

After deposing Lynch as secretary the directors notified Mrs. Nelligan that the property would be sold to satisfy the trust. Thereupon this suit was begun. A decree was passed herein adjudging that the indebtedness secured by the trust had been discharged by such payment to Lynch, and directing the defendant trustees to release said trust, from which decree appellants appealed.

ASSIGNMENT OF ERRORS.

Appellants claim that the court below erred:

First. In not dismissing the bill.

Second. In holding that the amount secured by said trust had been paid to John T. Lynch for the building association.

Third. In holding that such payment, if made, discharged the indebtedness represented by said bond and secured by said deed of trust.

Fourth. In directing appellants Woodward and White to release said trust.

BRIEF AND ARGUMENT.

First Assignment of Errors.

The court below should have dismissed the bill :

(a) Payment of the money borrowed to the building association alone would justify the granting of any relief to appellees. No such payment was made. This question is more fully discussed under the second and third assignment of errors.

(b) Complainants are chargeable with *laches* which prevent them obtaining relief in equity. They claim the debt secured was paid to Lynch in April, 1890, by Mrs. Nelligan acting for her husband, but show that shortly thereafter both Nelligan and his wife had actual and timely notice that the association had not received the money (Rec., p. 18). They did nothing. Nelligan evidently was satisfied that his nephew would some time look after the matter, probably in accordance with some understanding between them. Mrs. Nelligan thought probably Lynch had used the money and would make it good some other time, and would not mention the matter for fear of injuring his reputation (Rec., pp. 22, 23). The only explanation consistent with their failure to act is that this money was given to Lynch for his own use. Possibly he undertook to be good for the debt due the building association. It is possible that the mutilated statement had something upon it showing such obligation on the part of Lynch. Certainly it would have been receipted had the money been actually paid to Lynch for the association. Giving Lynch \$1,500 when only \$849.77 was due the association, would support this theory, as would their failure to act when they knew the money had not been paid into the association. It was Nelligan's duty at once to call the matter to the attention of the board of directors, not merely the treasurer. They were told by Daly to pay the money to the treasurer and

get a release (Rec., p. 111). This is uncontradicted. Appellee Frank Nelligan did nothing when his suspicions were aroused except to ask Lynch about it. Having direct notice of the wrongdoing of their agent and taking no action, they (and their heirs—appellees) are now estopped. Appellants had nothing to excite their suspicions except the fact of non-payment of dues, which was explained satisfactorily by Lynch acting in behalf of Nelligan.

“A party may not deny a state of things which by his culpable silence or misrepresentations he has led another to believe existed, if the latter acted upon that belief.”

Bank vs. Morgan, 117 U. S. 96.

Morgan vs. RR. Co., 96 U. S. 720.

(c.) This suit was begun in April, 1899. Appellees were not only idle for years after they had their suspicions aroused, but they have not prosecuted this suit with any diligence.

“Mere institution of a suit does not of itself relieve a person from the charge of *laches*, and if he fail in a diligent prosecution the consequences are the same as though no action had been begun.”

Johnson vs. Mining Co., 148 U. S. 360.

Second Assignment of Errors.

It is not established that Mrs. Nelligan paid this money to Lynch as she has testified. If such were a fact it could have been settled beyond doubt by the testimony of Mr. Tobriner, who would doubtless have testified, had his testimony been of value. The circumstances are too suspicious to warrant the acceptance of Mrs. Nelligan's testimony as true, and the court is not obliged to find a fact as proven even though it be testified to and not disproven.

Slater vs. Hamacher, 15 App. 558.

Lynch might have been produced to testify. The mutilated statement which should have been receipted, does not

tend to show that payment was intended to be, or was made to Lynch for the association. Giving Lynch about \$1,500 without receipt or acknowledgment, tends to show a lending of money to Lynch rather than payment of a debt of less than \$900. Failure to produce the pass book, which should have been found among Nelligan's papers, is also unfortunate. All circumstances tend to show a loan to Lynch, not payment of an indebtedness.

Third Assignment of Errors.

If Mrs. Nelligan paid Lynch money, as she testified, the indebtedness to the association was not discharged. The members of the building association subscribed to the constitution and became partners. Each member is bound by the contract thus made with the others.

The by-laws of an association—

“Embody the terms of a contract between the company and its members. . . . and are as binding upon its members and upon others acquainted with its method of business as any public laws of the State.”

Beach on Corporations, Sec. 321.

Bergman *vs.* St. Paul Asso., 29 Minn. 275.

Englehart *vs.* Bldg. Asso., 148 N. Y. 281.

“The charter of the corporation is a contract between the corporation and the stockholders. An unincorporated building association is merely a partnership and the laws of partnership apply.”

Endlich on Building Associations, Sec. 517.

Clark *vs.* Life Association, 14 App. 173.

Livingstone *vs.* Lynch, 4 Johns. Ch. 573.

Thornton & Blackledge on Building Association, Sec. 119.

Bank *vs.* Bank, 78 Hun, 90.

This contract (constitution) provided that the treasurer should receive all moneys paid into the association, and that moneys were to be paid *on certain days*. Nelligan was a partner, bound by the constitution and his special contract—his bond.

“If an agent’s authority is set forth in a manner necessitating the coming under the observation of the other party to the contract, the other party is bound to take notice of the limitation.”

Endlich on Building Associations, Sec. 246.

“All the members of the corporation or society are presumed in law to have notice of its by-laws. This is a *legal presumption* conclusive in its nature; and accordingly direct proof of such notice is not required.”

Thompson on Corporations, Sec. 941 and cases cited.

Thompson on Building Associations, Sec. 120.

Bauer *vs.* Samson Lodge, 102 Ind. 262.

McLelland *vs.* B. P. S., 15 Mo. App. 362.

Clark *vs.* Life Ins. Co., 14 App. 173.

This is recognized law by appellees, who contend that the provisions of the constitution were waived by the directors. The constitution could not be waived except by all the parties to it—every stockholder. Notice of waiver would need be brought home to every stockholder, not merely the directors. Appellants represent each and every stockholder, who are very numerous. From 1884 to 1898 Lynch is shown to have brought certain moneys to the association as dues for a few persons. Possibly every other stockholder did likewise. The association particularly guarded against any attempt at waiver or change in contract by articles XX. and XXII. of its constitution.

“The by-laws of a building association are in the nature of a contract between the members of the

association, and the officers, in dealing with its members, have no power to waive any of their provisions."

Thornton & Blackledge on Bldg. Asso., Sec. 122.

Thompson on Bldg. Asso., Sec. 22.

Flint *vs.* Pierce, 99 Mass. in 96 A. D. 691.

"Officers in a mutual insurance company, in dealing with a member, have no authority to waive the provisions of the by-laws unless express power to do so has been conferred upon them; because the by-laws are private statutes by which the members have agreed to be governed."

Thompson on Corporations, Sec. 945 and cases cited.

Brewer *vs.* Chelsea Ins. Co., 14 Gray, 203.

Evans *vs.* Insurance Co., 9 Allen, 330.

Mulrey *vs.* Shawmut Ins. Co., 4 Allen, 116.

Worth v. Reg. Assn. 43 N.J. L. 75

"These terms form a contract which can not be altered except by the consent of the parties thereto."

Thompson on Bldg. Asso., Sec. 54.

Middlesex *vs.* Swan, 10 Mass. 384.

Bergman *vs.* St. Paul B. A., 29 Minn. 275.

Nor can a course of conduct by officers acquiesced in by the directors justify a violation of such contract *between the members.*

"As between itself and its members, a course of dealing at variance with its by-laws for whatever length of time it may be pursued or acquiesced in is of no validity."

Thornton & Blackledge, Secs. 118-122.

Watson *vs.* Bendigo, B. A. L. R. Eq. 10 Vict. 26.

Thompson on Building Associations, Sec. 143.

Van Wagenen *vs.* Genesee B. A., 88 Hun, 43.

"Nor can power of the secretary to receive money for the association be implied from the fact that he had on other occasions received and paid it in at weekly meetings."

Thompson on Building Associations, Sec. 143.

Thornton & Blackledge, Bldg. Asso. Sec. 75.

Van Wagenen *vs.* Genesee B. A., 88 Hun, 43.

Receipt of money by Lynch, or any other director or stockholder, was never considered a payment to the association until it had been paid to the treasurer at a regular meeting. The association *has never lost one cent of money received by Lynch as dues*. Lynch was Nelligan's agent, and appellees are bound by his actions. None of the directors ever knew that Lynch receipted for money from members except at the association meetings, while keeping check upon and acting for the treasurer. James Nelligan was recalled to testify that he had once paid dues to Lynch in Daly's presence, but his testimony is denied and had it been true Nelligan would have said so when he first testified. It is not shown that any of the directors ever knew that Lynch issued pass-books at his house. The contrary is shown. Lynch was not in any manner held out as the agent of the association to receive money.

"The payment to the manager of a building association not authorized to receive money is not payment to the association."

Endlich, Sec. 319 and citations.

Morrow *vs.* James, 3 Mackay, 27.

Van Wagenen *vs.* Genesee Falls Asso., 88 Hun, 43.

Thompson on Corporations.

Even if Nelligan were not by the constitution charged with notice to pay the treasurer only, still it would have

been his duty to know Lynch's authority before paying to him.

"Where payment is made to an agent there must be some evidence of his authority to receive the money."

Endlich, Sec. 245.

Morrow *vs.* James, 3 Mackay, 29.

"Payment may be made to a duly authorized agent, and his agency may be inferred from the possession of the securities, but the debtor must show that the securities were in the custody of the agent. This rule has been strictly adhered to, such possession being indispensable evidence."

Jones on Mortgages, Sec. 964.

It is not shown that Mr. or Mrs. Nelligan knew Lynch had the trust and bond on April 19, 1890; and if it be claimed that they had such notice by reason of the provisions of the constitution, appellees are met by the further provision of the constitution, which they must also be held to know, that Lynch had no authority to receive the money, and that they should have had a release of their property upon payment of the money.

"The rule as to possession requires two elements: 1st, the possession of the securities by the agent with the consent of the mortgagee; and 2d, knowledge of such possession on the part of the mortgagor. The mere possession of the securities by the attorney is not sufficient, the mortgagor must have knowledge of the fact. It is necessary for the mortgagor to show that the securities were in the possession of the agent at the time *and that he knew the fact.*"

Crane *vs.* Grunewald, 120 N. Y. 274.

Haynes *vs.* Pohlman, 25 N. J. Eq. 179.

Second Edition Encyc. Law "Agency," 1026.

It is nowhere shown that Lynch received payment of advances from any debtor. Had he been authorized to receive

dues, it does not follow that he was authorized to receive the mortgage.

"Where the agent is authorized to receive the interest, the mortgagor is not warranted in inferring that he has authority to receive the principal."

Williams *vs.* Walker, 2 Sanf., 325.

Had Lynch been authorized to receive payment of the dues or mortgage money at the association rooms, he was not authorized to receive it elsewhere.

"A clerk authorized to receive money over the counter, payment made to him elsewhere is not good."

Kaye *vs.* Brett, 5 Exch. 269.

Jackson *vs.* Jacobs, 5 Scott, 79.

The constitution provided that payments should be made on the *second Wednesday* of each month. April 19, 1890, *was not the second Wednesday*. Time is as essential as place.

"Where the constitution of a building association requires the stockholders to pay their dues upon their stock at regular stated meetings, payments not made at such meetings are not valid payments to bind the association in case of the embezzlement of such moneys by the officer so receiving them."

Morrow *vs.* James, 4 Mackay, 59.

"A payment by a stockholder of a building association, of his dues to one of its officers not having authority to receive them does not discharge the stockholder if the officer so receiving the money fails to pay it over; nor can the association charge the loss against its assets in his account with the stockholders so as to diminish the value of their shares."

Morrow *vs.* James, 3 M. 27.

This is now text-book law. After the taking of proof this case came on for hearing and is reported in 4 Mackay.

It appeared, however, in evidence, the secretary was *authorized by the constitution* to receive dues, but as he had not received them at the *time* and *place* the constitution provided, it was held to be no payment to the association.

The case of *Browne vs. Sanders*, 20 D. C., did not affect the decision in *Morrow vs. James*, 3 Mackay. In that case it appeared that the plaintiff, a director and shareholder, paid his money to the defaulting secretary, and wanted to recover that amount together with 10 per cent interest from the association regardless of gains or losses, and the court held that the shareholder was entitled only to his *pro rata* share of the assets, not to some definite sum in addition thereto, when such had not been earned.

Fourth Assignment of Errors.

It follows that if the money borrowed by Nelligan was not repaid to the association the court erred in directing a release of the trust.

Appellees contend that it was the duty of the appellants to notify them of the non-payment of the dues; that the finance committee when they examined the secretary's accounts must have known that the bond and deed of trust were missing, and that because Lynch left the name of Nelligan off the roll book after September, 1891, the association treated the account as settled. They attempt to apply the principle that where two innocent people suffer, he should bear the loss who enabled the injury to be committed. The answers to these propositions are conclusive:

1st. There was no obligation whatever resting upon the directors to notify David Nelligan or his heirs of arrearages. Nor were they under obligation to enforce payment by foreclosure until they thought best. *Kellum v. Peckham, 21 Pa. c. c. R. 58*

Certainly Nelligan's heirs, who were under no personal obligation to pay the indebtedness, were not entitled to

such notice. The question of time cannot enter into this proposition.

2d. It is not shown that the finance committee did not find this bond and trust every time they examined the secretary's accounts. It does not appear affirmatively that they have been in Nelligan's custody for these several years. The Nelligans are careful not to testify that these papers were undisturbed after the death of David. There is no presumption that they were delivered to Nelligan himself, either before or after April, 1890. Perhaps they were delivered before. Perhaps years after. Perhaps when Lynch was ousted as secretary.

3d. The absence of the Nelligan's name from the roll-book does not affect the matter one way or the other. These roll books do not contain the accounts of moneys loaned, nor the accounts with members. They were simply accounts of dues and fines paid by the stockholders. The treasurer is only supposed to keep an account of the money he receives; there was no reason for him to keep on his list the name of a member who was not paying. No book shows the mortgage debt to have been paid, and other books do show the indebtedness existing.

4th. Who is the innocent party in this matter? The association, which had ample security for its loan; which constantly received excuses from the agent and nephew of the Nelligans, whom appellees show represented them throughout; whose custom was not to enforce loans arbitrarily; which had no intimation that the money had been paid to Lynch, or that anybody contended that the amount was not due; or the Nelligans, of whom David and his wife had timely notice that the association had not received the money they claim to have paid Lynch; who did not receive what by the constitution they knew was their due, namely, a release of the trust; whose suspicions were so far aroused that Mrs. Nelligan called upon Daly and although she says

that he gave her no satisfaction, did nothing else, thinking Lynch had used the money and would make it good; whose son was so suspicious that he called upon Lynch, who told him the debt had been paid, whereupon he rested satisfied; when a single step properly taken by Nelligan or appellees would have exposed the true state of affairs? It is not shown that Lynch ever made a false representation to Nelligan before receiving the money.

Respectfully submitted,

WHARTON E. LESTER,

Attorney for Appellants.

MEMORANDA FROM PLEADINGS AND TESTIMONY.

APPELLEES' TESTIMONY.

The bill states that in all matters connected with the building association Nelligan dealt with Lynch only (p. 3).

The bond and trust executed by Nelligan provided in terms for payment to the "Treasurer, or his successor in office" (p. 6, 8).

The constitution provides: That members shall sign the constitution and receipt for certificate of stock (Art. 5, Sec. 2); that "it shall be the duty of the Treasurer to receive all moneys paid into the association" (Art. 8); that trustees shall execute deeds of release (Art. 10); that payments shall be made on the *second Wednesday* of each month (Art. 13); that upon payment of advances, stockholders shall be entitled to a deed of release (Art. 15); *that no by-laws may be made in conflict with the constitution* (Art. 20), and *that no amendment or alteration of the provisions of the constitution shall be made except upon full notice, and with the consent of two-thirds of the members present* (Art. 22).

Mary Nelligan testifies

that David, her husband, died Dec. 24, 1892; that he had owned two houses (15*); that she made payments of dues for David to Lynch and his wife at Lynch's house (16); that her husband never had a pass book (17); that on April 19, 1890, Mr. Tobriner counted out nearly \$1,500, which she handed to Lynch, saying: "*Here, John, you take your money out of here and give the balance to your Uncle Dave*" (17); of which Lynch gave her \$10 or \$50 for her own use; that she told Daly about such payment before her husband died; that Sullivan had told her husband

* Figures indicate page of record.

that the treasurer had no account of the payment to Lynch, and her husband told her (18), whereupon she saw Daly and told him what Sullivan had said; that Daly told her, "Now, hush!" but never said whether the money was paid or not paid (19); that she never went to see Daly about it again, for she "*thought perhaps Lynch might have taken the money and used it in his business,*" but "*had suspicions of Lynch, because he would not give me a book to enter my money in;*" never did anything else; thought Lynch had used the money before she saw Daly, because her husband could not get money from Lynch (22). Is Lynch's aunt, and saw Daly in summer of 1890 or 1891; did not tell husband or anyone (except a young lady) about seeing Daly, "*because I was afraid I might injure Mr Lynch's reputation.*" (23).

Frank Nelligan testifies

that after his father's death he and his brother John called on Lynch (24) to ascertain how his father stood with the association, and wanted to be told in his brother's presence; that Lynch told him nothing was due the association; *that there were outside transactions about which there was a difference* (25); that his father had told him that he had settled with the association, and he wanted to be sure about it; *that he made no inquiries of anyone else* (26).

Thomas White testifies

that he helped Mrs. Nelligan and Frank to look through David Nelligan's papers and found bond and trust (27). (Note: Does not tell why he was called in to witness the "find").

Mary Stafford testifies

that she has known Lynch since she was a child, and lived a few squares from him (33); would take her dues to Lynch's house and leave them there with Lynch or his wife (34).

Michael D. White testifies

that he made payment of dues chiefly to Daly, sometimes, he thinks, to Lynch; both would be sitting at the table and Lynch would, presumably hand money to Daly (38); both would be at the table side by side, and Lynch handed money to Daly in his presence (39).

Thomas Barry testifies

that he lived near Lynch and paid him money at the association rooms (42), sometimes at his house; is Lynch's uncle (43); lived one square from him and paid him at his house because it saved him a trip to the hall; Lynch and Daly were sitting at the same table at the association rooms when payments were made (44).

Thomas Dunn testifies

that he made payment of dues at the association rooms to Lynch and Daly; both would be sitting at the same table; handed the money to Lynch, who immediately handed it to Daly; sometimes would not feel like going down town and would give money to Lynch at his home (46); is first cousin to Lynch's father, and has known Lynch thirty years (49). "If I didn't feel like going down to the city I would give it to Lynch" (50).

Mary Lynch testifies

that she made payments to Lynch, his wife, or sister (50-53); has known Lynch about fifteen years; authorized him to draw her money out for her (53-4).

Thomas A. Creamer testifies

that he received pass book at Lynch's house; got money from Daly when he drew out (55); has known Lynch all his life and lived in his neighborhood (56).

John Mangan testifies

that he made payments and received book from Lynch at his house; has known Lynch about fifteen years (58); lived a square from Lynch and gave him the money because he was nearer than the building association rooms, and to save himself the trip (59).

Mary A. J. Power testifies

that she paid Lynch \$666.60 (63); paid dues to both Daly and Lynch, and she thought they were doing her a favor in taking the money and paying the dues for her (64); can not say that Judge Barnard did not pay the \$666.60 for her, does not remember, it was so many years ago, may be mistaken in saying that she paid Lynch at his house, is not positive, but it seems to her that she did (65); Judge Barnard may have attended to the matter for her, but she does not remember (67); has had no occasion to remember these matters until now (69); paid dues to Lynch and Daly because it was not convenient for her to attend the meetings, and was acquainted with both of them (70).

Morgan McInnery testifies

that he paid money to Lynch at his house and received Lynch's private check when he drew out (71); that Lynch's wife is his first cousin and the only reason he gave him the money was that it was more convenient than for him to go to the association meetings (73).

Edwin C. Goss testifies

that he received personal check from Lynch when he drew his money (76).

Jeremiah F. Nelligan recalled, testifies

that he made payment of dues for his father at Lynch's

house, once when Daly was present (77); told Mr. Tobriner all about this before he testified at Atlantic City (79).

The Exhibits of Pass Books

show that Daly and Lynch receipted for dues in pass books, Lynch more frequently than Daly in instances shown (81).

APPELLANTS' TESTIMONY.

John O'Connor testifies

that he has been connected with the association during all its existence; that in the payment of dues at the association, the treasurer and secretary would be sitting at the same table, members would lay their books containing their dues in front of the secretary, who would take the money out of the book and, *without counting it*, hand it to the treasurer, who would announce the amount, whereupon each would record the amount in his book, and the secretary would write his name in the pass book (84, 86); that he remembers the Nelligan loan was called up several times, and Lynch would make excuses for its non-payment, and report the security ample (85, 89); that he never knew Lynch to receive money or issue pass books at his house (90).

Thomas Lanigan testifies

as to manner of payment of dues, and to the fact of the Nelligan indebtedness coming up. His testimony is similar to that of John O'Connor (93, 94).

Daniel P. Morgan testifies

that liquidation began before Lynch's dismissal as secretary, and of Lynch's excuses for Nelligan (97).

William J. Ward testifies

as to manner of payment of dues. His testimony is similar to that of John O'Connor (100).

Timothy D. Daly testifies

that he was treasurer during the existence of the association; that meetings were held on the *second Wednesday* of each month; that he was present at every meeting except two; that liquidation began June, 1898 (101), before Lynch was deposed (102); that all payments were made at regular meetings, the money being brought by members, strangers and children, who would hand money and book to secretary or to him, if to the secretary, the latter would hand the money to witness, who would count it, tell secretary the amount, who would enter it on the stockholder's pass book and sign his name (103); that liquidation began before Lynch was deposed, and before directors had any knowledge of any charges of wrongdoing against Lynch; that Lynch, like all the directors, children, men and women, brought dues to the meetings for others (104), including witnesses who testified for complainants; that Lynch was deposed for neglect to make proper report; that he knew Nelligan for about fifteen years; Nelligan was a cow dealer and a very good business man (105); that Nelligan himself *brought his book* to the association and paid dues to the treasurer; that Nelligan got his own loan, and received in all about \$1,100, of which \$300 only has been paid; *that no "settlement" was ever made to Lynch*; that his recollection is that Judge Barnard paid Miss Power's money (106); that the question of Nelligan's indebtedness came before the directors a dozen times, and gives reason for not enforcing trust (107); *that Lynch was never authorized to issue pass books or to receive money at his house; never knew of his doing so*; books would have to be brought to the association before members could get their certificates of stock; that

